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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 STANFORD PAUL BRYANT,) Civil No. 08cv02318 W(RBB)
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13 Plaintiff,) **REPORT AND RECOMMENDATION**
14 v.) **GRANTING IN PART AND DENYING**
15 T. ARMSTRONG, Correctional) **IN PART DEFENDANTS' MOTION FOR**
16 Officer; et al.,) **SUMMARY JUDGMENT [ECF NO. 91]**
17) **AND DENYING PLAINTIFF'S MOTION**
18) **FOR SUMMARY JUDGMENT [ECF NO.**
19) **92]**
20 Defendants.)
21 _____)

22 Plaintiff Stanford Paul Bryant, a state prisoner proceeding
23 pro se and in forma pauperis, filed a Complaint on December 12,
24 2008 [ECF No. 1], and a First Amended Complaint on March 3, 2009
25 [ECF No. 3], pursuant to 42 U.S.C. § 1983. The ten named
26 Defendants moved to dismiss Plaintiff's First Amended Complaint
27 [ECF Nos. 15, 18]. The Court issued a Report and Recommendation
28 Granting in Part and Denying in Part Defendants' Motion to Dismiss
Plaintiff's First Amended Complaint [ECF No. 27]. United States
District Court Judge Thomas Whelan subsequently adopted the Report
and Recommendation [ECF No. 37].

1 The Plaintiff filed a Second Amended Complaint on June 23,
 2 2010 [ECF No. 39].¹ All ten Defendants moved to dismiss the Second
 3 Amended Complaint [ECF No. 40], which was granted in part and
 4 denied in part [ECF Nos. 46-47]. The six remaining Defendants,
 5 Armstrong, Catlett, Janda, Lizarraga, Ochoa, and Trujillo, then
 6 filed an Answer [ECF No. 49].

7 On December 23, 2011, Defendants' Motion for Summary Judgment
 8 was filed, along with a Memorandum of Points and Authorities and
 9 the declarations of Tammy Armstrong, G. Janda, G. Trujillo, T.
 10 Catlett, T. Ochoa, and R. Lizarraga [ECF No. 91]. Plaintiff's
 11 Motion for Summary Judgment and exhibits were filed the same day
 12 [ECF No. 92]. The Court issued a Klinge/le/Rand Notice on January
 13 4, 2012, advising Bryant of the need to submit evidence in
 14 opposition to Defendants' Motion [ECF No. 93]. On February 17,
 15 2012, "Defendants' Notice to Court Re: Opposition to Plaintiff's
 16 Motion for Summary Judgment" was filed, in which Defendants ask the
 17 Court to consider all evidence and facts submitted in their summary
 18 judgment motion as also in opposition to Plaintiff's Motion for
 19 Summary Judgment [ECF No. 96]. Plaintiff's Opposition to
 20 Defendants' Motion for Summary Judgment was filed on March 26,
 21 2012, along with exhibits [ECF No. 101].

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 24 ¹ Bryant's Second Amended Complaint [ECF No. 39], the
 25 documents attached to Defendants' Motion for Summary Judgment [ECF
 26 No. 91], Plaintiff's Motion for Summary Judgment [ECF No. 92],
 27 Plaintiff's Opposition to Defendants' Motion for Summary Judgment
 28 [ECF No. 101], Plaintiff's Supplemental Memorandum of Points and
 Authorities in Support of Opposition to Defendants' Motion for
 Summary Judgment [ECF No. 113], and the Supplemental Declaration of
 Stanford P. Bryant in Support of Opposition to Defendant's Motion
 for Summary Judgment [ECF No. 115] are not consecutively paginated.
 The Court will cite to all these filings using the page numbers
 assigned by the electronic docketing system.

1 The "Supplemental Memorandum of Points and Authorities in
2 Support of Opposition to Defendant's Motion for Summary Judgment"
3 was filed nunc pro tunc to July 19, 2012 [ECF No. 113]. The
4 "Supplemental Declaration of Stanford P. Bryant in Support of
5 Opposition to Defendant's Motion for Summary Judgment" was filed
6 nunc pro tunc to the same day, along with exhibits [ECF No. 115].
7 In his latest filing, Plaintiff indicates that he recently received
8 supplemental discovery responses from Defendants in light of the
9 Court's order compelling the discovery. (Pl.'s Suppl. Mem. P. & A.
10 Opp'n Defs. Mot. Summ. J. 2, ECF No. 113.) The Defendants
11 responded on August 1, 2012, and filed Defendants' Reply to
12 Plaintiff's Supplemental Memorandum of Points and Authorities [ECF
13 No. 116].

14 The Court has reviewed the Second Amended Complaint,
15 Defendants' Motion for Summary Judgment, Bryant's Motion for
16 Summary Judgment, Plaintiff's Opposition, Plaintiff's Supplemental
17 Memorandum and Declaration, and Defendants' Reply. Both summary
18 judgment motions are suitable for resolution on the papers,
19 pursuant to Civil Local Rule 7.1. See S.D. Cal. Civ. R. 7.1(d)(1).
20 For the reasons stated below, Defendants' Motion for Summary
21 Judgment should be **GRANTED in part** and **DENIED in part**. Bryant's
22 Motion for Summary Judgment should be **DENIED**.

23 I. FACTUAL BACKGROUND

24 Plaintiff's allegations arise from events that occurred while
25 he was incarcerated at Calipatria State Prison ("Calipatria").
26 (Pl.'s Mot. Summ. J. 7, ECF No. 92.)

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1 **A. Count One: Equal Protection (Defendant Armstrong)**

2 In count one, Bryant argues that Defendant Armstrong violated
3 the Equal Protection Clause by discriminating against him because
4 of his race. (Id. at 11, 13; see Defs.' Mot. Summ. J. Attach. #1
5 Mem. P. & A. 6, ECF No. 91.) He claims that during the eight
6 months Armstrong was "ASU #2's Legal Officer," she scheduled Bryant
7 and other African-American inmates to attend the law library during
8 times they were assigned to yard recreation. (Pl.'s Mot. Summ. J.
9 11, 13, ECF No. 92; see Defs.' Mot. Summ. J. Attach. #1 Mem. P. &
10 A. 19, ECF No. 91.) Notably, Armstrong scheduled Hispanic
11 prisoners to law library time when it did not interfere with their
12 yard time. (Id.)

13 **B. Count Two: Retaliation (Defendant Armstrong)**

14 Bryant argues in count two that on January 28, 2008, Defendant
15 Armstrong violated the First Amendment by retaliating against him
16 for exercising his First Amendment rights. (Pl.'s Mot. Summ. J.
17 15, ECF No. 92; see Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 6,
18 ECF No. 91.) Plaintiff claims that Armstrong overheard him helping
19 another inmate prepare a grievance against her, and she accused
20 Bryant of "snitching" on her in front of other inmates. (Pl.'s
21 Mot. Summ. J. 15, ECF No. 92; see Defs.' Mot. Summ. J. Attach. #1
22 Mem. P. & A. 22-23, ECF No. 91.) Plaintiff verbally complained and
23 then submitted a grievance against Armstrong; she retaliated by
24 filing a false informational chrono against him on January 28,
25 2008, that is incorrectly dated February 7, 2008. (Id.)

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C. Count Three: Equal Protection and Retaliation (Defendants Lizarraga, Trujillo, Catlett, Ochoa, and Janda)

The Plaintiff argues in count three that Defendants Lizarraga and Trujillo violated the First and Fourteenth Amendments by retaliating and discriminating against him. (Pl.'s Mot. Summ. J. 13-14, 16-19, ECF No. 92; see Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 6, ECF No. 91.) Defendants Catlett, Janda, and Ochoa violated the First Amendment by retaliating against Plaintiff. (Pl.'s Mot. Summ. J. 17-20, ECF No. 92; see Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 6, ECF No. 91; see also Second Am. Compl. 41-42, ECF No. 39.)

In particular, Plaintiff asserts that after he and another inmate submitted grievances against Armstrong, Defendant Lizarraga retaliated against Bryant and other African-American inmates by moving them to more restrictive cell placements, threatening Plaintiff, and filing a false rules violation report against Bryant. (Pl.'s Mot. Summ. J. 8, 16-17, ECF No. 92; see Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 24, ECF No. 91.) Lizarraga's actions are also alleged to violate the Equal Protection Clause. (See Second Am. Compl. 25-30, ECF No. 39; Pl.'s Mot. Summ. J. 8, 13-14, ECF No. 92.) Further, Defendant Trujillo retaliated against Plaintiff by refusing to allow Bryant to call witnesses at his disciplinary hearing and by falsifying the corresponding disciplinary report. (Pl.'s Mot. Summ. J. 18-19, ECF No. 92; see Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 26, ECF No. 91.) Bryant contends that Trujillo's actions also constituted racial discrimination. (Pl.'s Mot. Summ. J. 8, 14, ECF No. 92.)

1 Finally, Defendants Catlett, Ochoa, and Janda purportedly
 2 retaliated against Plaintiff by ratifying Defendants Armstrong,
 3 Lizarraga, and Trujillo's discriminatory conduct. (*Id.* at 17-20
 4 (asserting that Defendants Catlett and Janda retaliated in this
 5 manner); *see* Second. Am. Compl. 41-42, ECF No. 39 (alleging that
 6 Defendants Catlett, Janda, and Ochoa retaliated by endorsing the
 7 other Defendant's discriminatory actions); *see also* Defs.' Mot.
 8 Summ. J. Attach. #1 Mem. P. & A. 27, ECF No. 91.).)

9 **D. Count Four: California Civil Code (Defendants Armstrong,**
 10 **Lizarraga, and Trujillo)**

11 In count four, Plaintiff alleges that Defendants Armstrong,
 12 Lizarraga, and Trujillo violated California Civil Code sections
 13 52.1, 51.7, and 52(b) by interfering with Bryant's constitutional
 14 rights because of his race. (Defs.' Mot. Summ. J. Attach. #1 Mem.
 15 P. & A. 6, 29, ECF No. 91; *see* Pl.'s Opp'n Defs.' Mot. Summ. J.
 16 28-30, ECF No. 101.) Armstrong and Lizarraga threatened Plaintiff
 17 with violence if he continued to submit grievances alleging racial
 18 discrimination. (Pl.'s Opp'n Defs.' Mot. Summ. J. 29-30, ECF No.
 19 101.) Bryant argues that Lizarraga "committed an act of violence"
 20 against him by removing legal documents from his cell without
 21 permission. (*Id.* at 30.) Similarly, he contends that Defendant
 22 Trujillo intimidated Plaintiff by having approximately three
 23 Hispanic officers surround him in a "menacing manner." (*Id.*)

24 **II. LEGAL STANDARDS FOR SUMMARY JUDGMENT MOTIONS**

25 Federal Rule of Civil Procedure 56(c) provides, "The court
 26 shall grant summary judgment if the movant shows that there is no
 27 genuine dispute as to any material fact and the movant is entitled
 28 to judgment as a matter of law." Fed. R. Civ. P. 56(a). Like the

1 standard for a directed verdict, judgment must be entered for the
2 moving party "if, under the governing law, there can be but one
3 reasonable conclusion as to the verdict." Anderson v. Liberty
4 Lobby, Inc., 477 U.S. 242, 250 (1986) (citing Brady v. S. Ry. Co.,
5 320 U.S. 476, 479-80 (1943)). "If reasonable minds could differ as
6 to the import of the evidence," judgment should not be entered in
7 favor of the moving party. Id. at 250-51; see also Blankenhorn v.
8 City of Orange, 485 F.3d 463, 470 (9th Cir. 2007).

9 The parties bear the same substantive burdens of proof that
10 would apply at a trial, including plaintiff's burden to establish
11 any element essential to his case. Cleveland v. Policy Mgmt. Sys.
12 Corp., 526 U.S. 795, 805-06 (1999); Celotex Corp. v. Catrett, 477
13 U.S. 317, 322 (1986); Liberty Lobby, Inc., 477 U.S. at 252; see
14 also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). "When
15 the nonmoving party bears the burden of proof at trial, summary
16 judgment is warranted if the nonmovant fails to 'make a showing
17 sufficient to establish the existence of an element essential to
18 [its] case.'" Nebraska v. Wyoming, 507 U.S. 584, 590 (1993)
19 (quoting Celotex Corp., 477 U.S. at 322). The absence of a genuine
20 issue of material fact on an essential element of a party's case is
21 sufficient to warrant summary judgment for the opposing party.
22 Celotex Corp., 477 U.S. at 322-23.

23 For those issues on which it has the burden of proof, the
24 moving party bears the initial task of identifying the pleadings
25 and evidence it "believes demonstrate the absence of a genuine
26 issue of material fact." Id. at 323; see also Adickes v. S.H.
27 Kress & Co., 398 U.S. 144, 157 (1970); Martinez v. Stanford, 323
28 F.3d 1178, 1182-83 (9th Cir. 2003). The burden then shifts to the

1 nonmoving party to establish, beyond the pleadings, that there is a
2 genuine issue for trial. See Celotex Corp., 477 U.S. at 324.

3 To successfully rebut a defendant's properly supported motion
4 for summary judgment, the plaintiff "must point to some facts in
5 the record that demonstrate a genuine issue of material fact and,
6 with all reasonable inferences made in the plaintiff[]s[] favor,
7 could convince a reasonable jury to find for the plaintiff[]."
8 Reese v. Jefferson School Dist. No. 14J, 208 F.3d 736, 738 (9th
9 Cir. 2000) (citing Fed. R. Civ. P. 56; Celotex Corp., 477 U.S. at
10 323; Liberty Lobby, Inc., 477 U.S. at 249). Material issues are
11 those that "might affect the outcome of the suit under the
12 governing law." Liberty Lobby, Inc., 477 U.S. at 248; accord
13 Chevron USA, Inc. v. Cayetano, 224 F.3d 1030, 1039-40 (9th Cir.
14 2000); SEC v. Seaboard Corp., 677 F.2d 1301, 1305-06 (9th Cir.
15 1982). More than a "metaphysical doubt" is required to establish a
16 genuine issue of material fact. Matsushita Elec. Indus. Co. v.
17 Zenith Radio Corp., 475 U.S. 574, 586 (1986).

18 In deciding whether any genuine issue of material fact remains
19 for trial, courts must "view[] the evidence in the light most
20 favorable to the nonmoving party" Fontana v. Haskin, 262
21 F.3d 871, 876 (9th Cir. 2001); see also Eastman Kodak Co. v. Image
22 Technical Servs., Inc., 504 U.S. 451, 456 (1992) (stating that the
23 nonmoving party's evidence is to be believed and all reasonable
24 inferences drawn in the nonmoving party's favor). "When opposing
25 parties tell two different stories, one of which is blatantly
26 contradicted by the record, so that no reasonable jury could
27 believe it, a court should not adopt that version of the facts for
28 purposes of ruling on a motion for summary judgment." Scott v.

1 Harris, 550 U.S. 372, 380 (2007). While the district court is not
2 required to search the entire record for an issue of fact, the
3 court may nevertheless exercise its discretion to consider
4 materials in the record that are not specifically identified.
5 Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031
6 (9th Cir. 2001); Forsberg v. Pacific Nw. Bell Tel. Co., 840 F.2d
7 1409, 1417-18 (9th Cir. 1988).

8 When the nonmoving party is proceeding pro se, the court has a
9 duty to consider "all of [the nonmovant's] contentions offered in
10 motions and pleadings, where such contentions are based on personal
11 knowledge and set forth facts that would be admissible in evidence,
12 and where [the nonmovant] attested under penalty of perjury that
13 the contents of the motions or pleadings are true and correct."
14 Jones v. Blanas, 393 F.3d 918, 922-23 (9th Cir. 2004) (citations
15 omitted).

16 III. DISCUSSION

17 In their Motion for Summary Judgment, Defendants Armstrong,
18 Lizarraga, Trujillo, Catlett, Ochoa, and Janda argue that Bryant's
19 remaining causes of action fail as a matter of law. (Defs.' Mot.
20 Summ. J. 1, ECF No. 91.)

21 Armstrong contends that she is entitled to summary judgment on
22 the equal protection claim in count one because there is no
23 evidence that any differential treatment was based on race or that
24 she had a discriminatory intent. (Id. Attach. #1 Mem. P. & A.
25 21-22.) Armstrong also moves for summary judgment on the
26 retaliation claim against her in count two because there is no
27 evidence that she issued the informational chrono against Bryant
28

1 for engaging in protected conduct; rather, Armstrong issued it
2 because of Plaintiff's repeated misconduct. (Id. at 23-24.)

3 Defendant Lizarraga moves for summary judgment on the equal
4 protection and retaliation causes of action against him in count
5 three. (Id. at 24-26.) Similarly, Defendants Armstrong, Trujillo,
6 Catlett, Ochoa, and Janda contend Bryant cannot establish a triable
7 issue for the retaliation claims against them in count three. (Id.
8 at 26-28.) Finally, Armstrong, Lizarraga, and Trujillo move for
9 summary judgment on the state law claims asserted by Bryant in
10 count four. (Id. at 29.)

11 Plaintiff maintains that he is entitled to summary judgment on
12 count one, his claim that Defendant Armstrong violated the Equal
13 Protection Clause by scheduling law library time in a
14 discriminatory manner. (Pl.'s Mot. Summ. J. 11-12, ECF No. 92.)
15 Bryant also argues that his retaliation claim against Armstrong in
16 count two presents no triable issue of fact because the evidence
17 establishes that she knew that he had advised another inmate on how
18 to submit grievances against her. (Id. at 15.) After Bryant
19 submitted his grievance, Armstrong prepared a false informational
20 chrono against him that is dated February 7, 2008, but Armstrong
21 maintains was submitted on January 28, 2008. (Id. at 15.)
22 Further, Plaintiff seeks summary judgment on his retaliation and
23 equal protection claims against Lizarraga and Trujillo, and his
24 retaliation causes of action against Defendants Catlett and Janda.
25 (Id. at 13-14, 16-20.)

26 **A. Count One: Equal Protection (Armstrong)**

27 The Supreme Court has stated that "whenever the government
28 treats any person unequally because of his or her [membership in a

1 protected class], that person has suffered an injury that falls
2 squarely within the language and spirit of the Constitution's
3 guarantee of equal protection." Adarand Constructors, Inc. v.
4 Pena, 515 U.S. 200, 229-30 (1995); see also Damiano v. Florida
5 Parole & Probation Comm'n, 785 F.2d 929, 932-33 (11th Cir. 1986)
6 (explaining that protected classes include race, religion, national
7 origin, and poverty). The same principle applies to inmates.
8 "[P]risoners are protected under the Equal Protection Clause of the
9 Fourteenth Amendment from invidious discrimination based on race."
10 Wolf v. McDonnell, 418 U.S. 539, 556 (1974). The equal protection
11 guarantee safeguards not only groups of people, but also
12 individuals who would constitute a "class of one." Vill. of
13 Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

14 A plaintiff can establish an equal protection violation by
15 demonstrating that the defendant intentionally discriminated on the
16 basis of plaintiff's membership in a protected class, such as race,
17 religion, national origin, and poverty. Barren v. Harrington, 152
18 F.3d 1193, 1194-95 (9th Cir. 1998); Damiano, 785 F.2d at 932-33.
19 Alternatively, if the state action does not implicate a fundamental
20 right or a suspect classification, a plaintiff can make an equal
21 protection claim by demonstrating that the defendant intentionally
22 treated plaintiff differently from similarly situated individuals
23 without a rational basis for the different treatment. Engquist v.
24 Or. Dep't of Agric., 553 U.S. 591, 601 (2008); Olech, 528 U.S. at
25 564.

26 An equal protection claim based on membership in a protected
27 class does not succeed, and the Fourteenth Amendment is not
28 violated, if the claim relies on unintentional conduct that has a

1 disparate impact. See Vill. of Arlington Heights v. Metro. Hous.
2 Dev. Corp., 429 U.S. 252, 265 (1977); Washington v. Davis, 426 U.S.
3 229, 239 (1976). "[A] plaintiff must show that the defendants
4 acted with an intent or purpose to discriminate against the
5 plaintiff based upon membership in a protected class." Barren v.
6 Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

7 In her Declaration, Defendant Armstrong submits that she was
8 the "Ad Seg Legal Officer in Administrative Segregation Unit #2,"
9 or law library officer, from April 2006 to January 2008. (Defs.'
10 Mot. Summ. J. Attach. #2 Decl. Armstrong 2, ECF No. 91.) She was
11 responsible for scheduling law library sessions for administrative
12 segregation unit ("ASU") inmates and escorting them from ASU to the
13 library. (Id. at 4.)

14 ASU #2 inmates were assigned to yard groups that were
15 determined by Calipatria's "classification staff;" Armstrong was
16 not involved in making these assignments. (Id. at 2.) Yard group
17 assignments were based on gang affiliations and compatibility, not
18 race. (Id. at 3.) During Armstrong's tenure, there were eight
19 different yard groups in ASU #2, and each group received three
20 sessions of outdoor exercise per week. (Id. at 2.) There was one
21 three-hour morning session and one three-hour afternoon session
22 every day except Thursday. (Id.) Defendant states that "[e]ach
23 yard group was scheduled for outdoor exercise on different yards at
24 different times." (Id.)

25 According to Armstrong, yard groups one, three, seven, and
26 eight were made up of prisoners who were part of the "Southern
27 Hispanic gang," and inmates of various races who were compatible
28 with that gang, including nonaffiliated inmates. (Id. at 3.) The

1 Southern Hispanic gang included Hispanic and Caucasian inmates.
2 (Id.) Bryant's group, yard group two, included prisoners who were
3 part of the "Crips" gang, which was comprised mostly of
4 African-American and Samoan inmates. (Id.) Yard groups four and
5 six consisted of prisoners who were housed on the "Sensitive Needs
6 Yard." (Id.) Finally, yard group five was comprised of "Blood"
7 gang members - mostly African-American inmates - and prisoners who
8 were compatible with the gang. (Id.) The basis for Armstrong's
9 hearsay statements is not apparent from her Declaration.

10 Because there was no law library in ASU #2, inmates had to be
11 escorted and transported to the library; only five inmates could be
12 taken at a time because they had to conduct their work in one of
13 the five separate holding cells inside the library. (Id. at 3-4.)
14 The law library was available to ASU #2 inmates every Monday from
15 9:00 a.m. to 11:00 a.m. or from 1:00 p.m. to 3:00 p.m., as well as
16 every Tuesday from 9:00 a.m. to 11:00 a.m. or from 1:00 to 3:00
17 p.m. (Id. at 4.) Armstrong attaches copies of the "Ad-Seg Law
18 Library Attendance Record" that she completed for the period from
19 October 29, 2007, to January 8, 2008. (Id. Ex. A, at 10-20.)

20 **1. Differential treatment**

21 According to Defendant, there is no evidence that she treated
22 the yard groups in a "substantially different" manner when
23 scheduling law library access. (Id. Attach. #1 Mem. P. & A. 20.)
24 Nonetheless, Armstrong concedes that on six different occasions,
25 she scheduled Bryant and the other inmates in yard group two for
26 law library visits at times that conflicted with their assigned
27 yard times. (See id. at 20-21.)
28

1 The law library and recreation yard schedules, attached as
2 exhibits to the cross motions, are for a finite period; yet, they
3 reveal differential treatment. Yard groups one, two, three, and
4 four had yard times on Mondays, Wednesdays, and Saturdays. (Id.
5 Attach. #7 Decl. Lizarraga 3.) Because the library was only
6 available on Mondays and Tuesdays, their yard and library times
7 could conflict on Mondays. (Id. Attach. #2 Decl. Armstrong 4.)
8 Yard groups five, six, seven, and eight had yard times on Tuesdays,
9 Fridays, and Sundays, so their scheduled yard and library times
10 could conflict on Tuesdays. (Id. Attach. #7 Decl. Lizarraga 3.)

11 Armstrong scheduled Bryant and other prisoners in yard group
12 two for morning or afternoon law library access that conflicted
13 with their Monday yard time on six of the twenty-two library
14 sessions reflected in the available attendance records. (Compare
15 id. Attach. #2 Decl. Armstrong Ex. A, at 10-11, 13-14, 18, 20, with
16 id. Attach. #7 Decl. Lizarraga Ex. A, at 16, 18, 22, 24, 32, 35.)

17 The inmates assigned to other yard groups did not have many
18 conflicts. Yard group one prisoners had no conflicts out of the
19 eight law library sessions that Armstrong assigned them. (Compare
20 id. Attach. #2 Decl. Armstrong Ex. A, at 10-11, 13-15, 17, 20, with
21 id. Attach. #7 Decl. Lizarraga Ex. A, at 18, 24, 26, 30, 35.)

22 Defendant scheduled inmates in yard group three to go to the
23 library seven times without any conflicts with their Monday yard
24 access. (Compare id. Attach. #2 Decl. Armstrong Ex. A, at 11,
25 13-17, 20, with id. Attach. #7 Decl. Lizarraga Ex. A, at 18, 24,
26 26, 30, 35.) Yard group four had no law library sessions during
27 this period. (See generally id. Attach. #2 Decl. Armstrong Ex. A,
28 at 10-20; id. Attach. #7 Decl. Lizarraga Ex. A, at 16-36.)

1 Armstrong scheduled group five inmates for nine library
 2 sessions, and none of them conflicted with their assigned Tuesday
 3 yard access. (Compare id. Attach. #2 Decl. Armstrong Ex. A, at
 4 10-12, 14, 16, 20, with id. Attach. #7 Decl. Lizarraga Ex. A, at
 5 17, 19-20, 24, 28, 36.)²

6 The prisoners in yard group six were scheduled for nine law
 7 library sessions, and only one of them conflicted with a yard
 8 assignment. (Compare id. Attach. #2 Decl. Armstrong Ex. A, at
 9 10-11, 14, 15-18, 20, with id. Attach. #7 Decl. Lizarraga Ex. A, at
 10 17, 19, 22, 26, 30, 35-36.) Out of the nineteen library sessions
 11 that Armstrong assigned to group seven prisoners, only two sessions
 12 conflicted with the inmates' Tuesday yard access. (Compare id.
 13 Attach. #2 Decl. Armstrong Ex. A, at 10-20, with id. Attach. #7
 14 Decl. Lizarraga Ex. A, at 19-20, 22, 24, 26, 28, 30, 36.) Finally,
 15 yard group eight inmates had no conflicts for the eleven times they
 16 were scheduled to go to the law library. (Compare id. Attach. #2
 17 Decl. Armstrong Ex. A, at 10-12, 14-20, with id. Attach. #7 Decl.
 18 Lizarraga Ex. A, at 20, 24, 36.)³

19
 20 ² The Defendant states that yard groups five and seven both
 21 had one occasion when their library access conflicted with their
 22 yard time, but she provides no basis for this determination.
 23 (Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 21, ECF No. 91.)
 24 Armstrong draws conclusions from the record without explaining the
 25 bases for them, forcing the Court to comb through the scheduling
 26 records to ascertain the number of conflicts per yard group.
 27 "[T]his Court has discretion to refuse to consider evidence that
 28 the offering party fails to cite with sufficient specificity." Bd.
of Trs. of the Sheet Metal Workers Health Care Plan v. Vigil, No.
 C08-181-JLR, 2011 U.S. Dist. LEXIS 28171, at *2 (N.D. Cal. Mar. 18,
 2011) (citing Orr v. Bank of America, NT & SA, 285 F.3d 764, 775
 (9th Cir. 2002)). Nonetheless, from the Court's review,
 Armstrong's calculations and records do not match.

³ These numbers only reflect part of the period in question.
 Yard recreation records for December 3, 4, 10, 11, 17, 18, and 31,
 2007, are illegible or unclear. (See Defs.' Mot. Summ. J. Attach.
 #7 Decl. Lizarraga Ex. A, at 26, 28, 30, 32-34, ECF No. 91.)

1 Thus, Bryant and the other yard group two inmates were
 2 scheduled for the law library at times that conflicted with their
 3 yard access on six occasions out of the twenty-two library
 4 sessions, or 27.27% of the time. (See generally id. Attach. #2
 5 Decl. Armstrong Ex. A, at 10-20; id. Attach. #7 Decl. Lizarraga Ex.
 6 A, at 16-36.) The inmates in yard groups one, three, five, seven,
 7 and eight had no conflicts. (See id.) Yard group seven prisoners
 8 had two conflicts out of nineteen library sessions, which is 10.52%
 9 of the time. (See id.) Yard group six inmates had one conflict out
 10 of nine sessions, or 11.11% of the time. (See id.)

11 The evidence demonstrates that Armstrong treated Bryant and
 12 the inmates in yard group two differently from other yard groups.
 13 Their conflicts were nearly triple that of any other yard group for
 14 the eleven-week period from October 29, 2007, to January 8, 2008.
 15 The inquiry is therefore whether the differential treatment rises
 16 to the level of an equal protection violation.

17 **2. Whether a suspect class is implicated**

18 Armstrong asserts that Bryant's claim that he and the other
 19 yard group two inmates were treated differently because of their
 20 race fails because no suspect class is implicated. (See id.
 21 Attach. #1 Mem. P. & A. 21.) The Defendant maintains that she
 22 scheduled law library times based on the inmates' yard group
 23 assignments, which are determined by gang affiliations, not race.
 24 (Id. at 20; see id. Attach. #3 Decl. Janda 3-4.) A yard group
 25 assignment is not a suspect class. (Id. Attach. #1 Mem. P. & A.

26 _____
 27 Lizarraga maintains that the Monday yard schedule for yard group
 28 two inmates rotated each week in the morning and afternoon, but
 Bryant represents that yard two had several conflicts on these days
 as well. (Pl.'s Mot. Summ. J. Decl. Bryant 30, ECF No. 92; see
 Defs.' Mot. Summ. J. Attach. #7 Decl. Lizarraga 3, ECF No. 91.)

21.) Armstrong concedes that yard groups two and five contained mostly Black prisoners; she points out that several other yard groups contained mostly Hispanic prisoners but were not treated the same as the Hispanic inmates in yard group one. (Id.) "[T]he fact that there were Black inmates in other yard groups provides further proof that any difference in treatment for Yard Group No. 2 was not race-based." (Id. at 20.)

Bryant states that the inmates in yard group one were Hispanic, and "there was never another race of inmates other than African-Americans" in yard group two. (Pl.'s Mot. Summ. J. Decl. Bryant 34, ECF No. 92.) Other than racial distinctions, yard groups one and two were similarly situated and had the same yard times, every Monday, Wednesday, and Saturday. (Id. at 22.) The Hispanic prisoners in yard one enjoyed four hours outside their cells every Monday - two hours at the law library and two hours on the recreation yard. (Id. at 24.) Bryant and the other African-American prisoners in yard two, however, only received two hours outside their cells every Monday because they had to choose between outdoor exercise and access to the law library. (Id.) Bryant attaches the "Administrative Segregation Daily Yard Activity" form for the one-week period of January 25, to January 31, 2008. (Id. at 22-23; see id. Attach. #1 Ex. 1, at 2-3.) The form indicates that yard group two was "controlled compatible Black/Northern Hispanic/Other," and the ethnicity of each inmate was "Black." (Pl.'s Mot. Summ. J. Decl. Bryant 23, ECF No. 92; see id. Attach. #1 Ex. 1, at 2-3.)

Armstrong contends that yard group assignments were based on gang affiliations, but she did not serve on the classification

1 committee that made the assignments. (See Defs.' Mot. Summ. J.
2 Attach. #2 Decl. Armstrong 2-3, ECF No. 91.) Defendant Janda, then
3 associate warden, states that the policy was to place inmates in
4 yard groups that were "controlled-compatible." (Id. Attach. #3
5 Decl. Janda 3.) Janda served on the committee that placed Bryant
6 in yard group two, which was deemed "controlled-compatible for
7 Crips (primarily Black inmates), Northern Hispanic gang members,
8 and other compatible inmates." (Id. at 4.) For yard group one,
9 Janda states, "I believe [yard group one inmates] were Southern
10 Hispanic gang members, and both affiliated and non-affiliated White
11 inmates who were deemed compatible." (Id.)

12 There is no document or record showing the gang breakdown by
13 yard. Defendant Janda's sworn statement that yard group two was
14 deemed compatible for Crips gang members conflicts with the annual
15 review form he signed on April 24, 2008, which does not discuss
16 gang affiliation; instead, Janda classified yard group two as
17 compatible for "Blacks, Northern Hispanics, Others." (See Pl.'s
18 Opp'n Defs.' Mot. Summ. J. Attach. #2 Ex. 25, at 112, ECF No. 101.)
19 Janda's current statement that yard group two was Crips compatible
20 also conflicts with Bryant's sworn statement and the ASU yard
21 activity form indicating that the inmates were "Black." (See Pl.'s
22 Mot. Summ. J. Decl. Bryant 34, ECF No. 92; id. Attach. #1, Ex. 1,
23 at 2-3.)

24 "Credibility determinations, the weighing of the evidence, and
25 the drawing of legitimate inferences from the facts are jury
26 functions, not those of a judge, whether he is ruling on a motion
27 for summary judgment or for a directed verdict." Liberty Lobby,

28

1 Inc., 477 U.S. at 255. There is a material issue of fact as to
2 whether the equal protection claim implicates a suspect class.

3 **3. Class-wide violation**

4 When asserting a class-wide violation based on membership in a
5 protected class, a plaintiff must establish that the defendant
6 acted with intent to discriminate based on plaintiff's membership
7 in that class. Barren, 152 F.3d at 1194. In cases alleging racial
8 discrimination, for example, "'proof of racially discriminatory
9 intent or purpose is required' to show a violation of the Equal
10 Protection Clause." City of Cuyahoga Falls v. Buckeye Cmty. Hope
11 Found., 538 U.S. 188, 194 (2003) (quoting Vill. of Arlington
12 Heights v. Metro. Hous. Dev. Corp., 429 U.S. at 265).

13 "'Discriminatory purpose' . . . implies more than intent as
14 volition or intent as awareness of consequences. It implies that
15 the decisionmaker . . . selected or reaffirmed a particular course
16 of action at least in part 'because of,' not merely 'in spite of,'
17 its adverse effects upon an identifiable group." Personnel Adm'r
18 of Mass. v. Feeney, 442 U.S. 256, 279 (1979) (footnote omitted)
19 (citation omitted); accord Navarro v. Bock, 72 F.3d 712, 716 n.5
20 (9th Cir. 1995).

21 If the yard groups were racially determined, Armstrong's
22 continued reliance on yard assignments to create the library
23 schedule may show that she acted with a discriminatory intent. As
24 discussed, to make an equal protection claim that Armstrong
25 discriminated on the basis of Bryant's race, Plaintiff must show
26 that the Defendant acted with a discriminatory intent when
27 scheduling law library visits. See City of Cuyahoga Falls, 538
28 U.S. at 194.

1 Defendant argues that the attendance records show that yard
2 group five also contained African-American inmates and was treated
3 the same as yard group seven, which included mostly Hispanic
4 prisoners. (Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 20-21,
5 ECF No. 91.) In his Declaration, then-Chief Deputy Warden Ochoa
6 states that there was nothing inherently wrong with scheduling
7 inmates for library access at times that conflicted with their yard
8 access. (See id. Attach. #6 Decl. Ochoa 4.) Further, the more law
9 library time an inmate sought, the greater the potential for a
10 conflict with yard time. (Id. Attach. #1 Mem. P. & A. 20.) When
11 making the schedules, Armstrong considered legal deadlines, last
12 minute attendance requests, limited space availability, gang
13 affiliations, outdoor exercise yard time, and library request
14 cancellations. (Id. at 22.)

15 Plaintiff argues that despite their same yard schedules,
16 Armstrong intentionally treated Bryant and the other inmates in
17 yard group two differently from inmates in group one by scheduling
18 them for the library at times that conflicted with their yard
19 times. (Pl.'s Mot. Summ. J. Decl. Bryant 23, ECF No. 92.)
20 Defendant "made it known" that she was affiliated with the
21 "Southern California Hispanic gangs," and she repeatedly referred
22 to those inmates as her "Homies." (Pl.'s Mot. Summ. J. 13.) When
23 Plaintiff went to the law library with Hispanic inmates assigned to
24 other yards, he heard Armstrong "whispering personal matters" to
25 those inmates about her two children who were half Hispanic. (Id.
26 Bryant Decl. 24.) Despite her concern for inmate conflict, Bryant
27 notes that Armstrong consistently scheduled yard group two
28 prisoners with prisoners from every other yard group. (Pl.'s Opp'n

1 Defs.' Mot. Summ. J. 18, ECF No. 101.) When Bryant and other yard
2 two inmates spoke to Armstrong about her scheduling, she told
3 Plaintiff, "You don't have to go to the law library!" (Pl.'s Mot.
4 Summ. J. Decl. Bryant 23, ECF No. 92.)

5 As evidence, Bryant attaches copies of the same law library
6 attendance records from October 29, 2007, to January 8, 2008, that
7 Defendant Armstrong provided. (Id. Decl. Bryant 24; id. Attach. #1
8 Ex. 4, at 10-20.) Bryant includes the declaration of inmate Ricky
9 Smith who also heard Armstrong refer to Southern California Latino
10 gang members as her "Homies." (Id. Attach. #1 Ex. 5, at 22.)
11 Plaintiff relies on the declarations of inmates Donnell Atlas and
12 Cleveland Dale, who submit that Armstrong gave them an ultimatum to
13 choose between the law library or recreation time. (Pl.'s Mot.
14 Summ. J. Attach. #1 Ex. 2, at 5-6, ECF No. 92; id. Ex. 3, at 8.)

15 In one of Armstrong's interrogatory responses, she discloses
16 that she was arrested for her involvement in a drug conspiracy
17 involving the "Avenues gang." (Pl.'s Suppl. Decl. Opp'n Defs.'
18 Mot. Summ. J. 2, ECF No. 115; id. Ex. 37, at 8.) Bryant argues
19 that being affiliated with a "Southern California Hispanic and/or
20 race-oriented gang" is evidence that Armstrong intended to racially
21 discriminate against Plaintiff when making the law library
22 schedule. (Pl.'s Suppl. Decl. Opp'n Defs.' Mot. Summ. J. 2, ECF
23 No. 115.) Reasonable minds, however, could differ as to whether
24 this proves Armstrong's discriminatory intent. Liberty Lobby,
25 Inc., 477 U.S. at 250-51 (stating that judgment should not be
26 entered in favor of the moving party if reasonable minds could
27 differ as to the import of the evidence); see also id. at 255
28

(noting that weighing evidence and drawing legitimate inferences from the facts are jury functions).

The conflicting evidence precludes summary judgment for either side on the class-wide equal protection claim. See Nelson v. City of Davis, 571 F.3d 924, 929 (9th Cir. 2009) (stating that when the evidence conflicts, questions of credibility present an issue of fact that is inappropriate for resolution on summary judgment).

a. Class-of-one violation

An alternative basis for relief may be an equal protection claim under a class-of-one theory. See Engquist, 553 U.S. at 601; Olech, 528 U.S. at 564. Under this theory, Plaintiff must establish that Armstrong intentionally treated him differently from other similarly situated individuals without a rational basis for the difference in treatment. See id.

"A class of one plaintiff must show that the discriminatory treatment 'was intentionally directed just at him, as opposed . . . to being an accident or a random act.'" North Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th Cir. 2008) (quoting Jackson v. Burke, 256 F.3d 93, 96 (2d Cir. 2001)). A class-of-one claim is premised on the theory that Defendants "harbor animus against [plaintiff] in particular and therefore treated [him] arbitrarily." Papas v. Arcadia Enters., Inc., No. 3:10-CV-00550-BR, 2012 U.S. Dist. LEXIS 58485, at *37 (D. Or. Apr. 25, 2012). Bryant, however, alleges that he and other African-American inmates assigned to yard two were subjected to racial discrimination in violation of their equal protection rights. (See Second Am. Compl. 13-15, ECF No. 39.)

1 To the extent that Plaintiff's allegations give rise to a
2 class-of-one equal protection claim, Defendant urges that any
3 disparate treatment was based on several considerations that were
4 rationally related to a legitimate purpose. (See Defs.' Mot. Summ.
5 J. Attach. #1 Mem. P. & A. 22, ECF No. 91.) Defendant represents
6 that when scheduling inmates for the library, she had to balance
7 several priorities. (Id. Attach. #2 Decl. Armstrong 4.)

8 Bryant was assigned law library sessions on twenty-two
9 different occasions. (Id. Attach. #2 Decl. Armstrong Ex. A, at
10 10-20.) He was given priority law library access nineteen out of
11 the twenty-two times due to verified court deadlines. (Id.; see
12 also id. Attach. #2 Decl. Armstrong 4-5 (reflecting that Armstrong
13 had to give priority law library access to inmates with court
14 deadlines).) As previously discussed, the record reflects that
15 Bryant had six out of twenty-two scheduling conflicts, or 27.27% of
16 the time. (See generally id. Attach. #2 Decl. Armstrong Ex. A, at
17 10-20; id. Attach. #7 Decl. Lizarraga Ex. A, at 16-36.) Yard group
18 seven prisoners had two conflicts out of nineteen conflicts, which
19 is 10.52% of the time, and yard group six inmates had one conflict
20 out of nine sessions, or 11.11% of the time. (Id.) Inmates in
21 yard groups one, three, five, seven, and eight had no conflicts.
22 (Id.)

23 Armstrong scheduled Bryant for library time that conflicted
24 with yard time more frequently than she scheduled conflicting
25 library and yard times for other inmates. The inquiry is whether
26 the schedules could have been rationally related to a legitimate
27 governmental interest. See Olech, 528 U.S. at 564. "[W]hen
28 undertaking rational basis review, the party defending the

1 constitutionality of the [conduct] need not introduce evidence or
2 prove the actual motivation behind [the conduct], but need only
3 demonstrate that there is some legitimate justification that could
4 have motivated the action." Adhi Parasakthi Charitable v. Twp. of
5 W. Pikeland, 721 F. Supp. 2d 361, 381 (E.D. Pa. 2010) (emphasis
6 added) (citing FCC v. Beach Commc'ns, 508 U.S. 307, 315 (1993)).

7 Armstrong identifies several considerations she had to take
8 into account when making the library schedules. (Defs.' Mot. Summ.
9 J. Attach. #2 Decl. Armstrong 4-5, ECF No. 91.) She submits that
10 she had to give inmates with court deadlines priority, process
11 inmates' library request slips, and fill canceled library spots.
12 (Id. at 4-6.) The Defendant also considered inmates' yard group
13 assignments because some yard groups could not go to the law
14 library at the same time due to a potential for conflict. (Defs.'
15 Mot. Summ. J. Attach. #2 Decl. Armstrong 5, ECF No. 91.)

16 Defendant also had to check inmates' ASU files for enemies and
17 affiliations, but she does not reference any instance in which this
18 concern led to Bryant's scheduling conflicts. (Id.) Moreover, the
19 evidence reflects that Defendant repeatedly scheduled individuals
20 from two to four different yard groups together at a time to attend
21 the law library. (See generally id. Attach. #2 Decl. Armstrong Ex.
22 A, at 10-20.)

23 Armstrong indicates she had to consider which yard groups were
24 attending yard recreation on a particular day to avoid conflicts
25 because the exercise yards were located "outside the rear exit of
26 ASU 2," which is the same exit used to escort inmates to the van to
27 be transported to the law library. (Id. Attach. #2 Decl. Armstrong
28 5.) Cellmates or inmates in the same yard group could be escorted

1 to the van in groups; otherwise, inmates were escorted separately
2 and the exercise yard was "shut down." (Id. at 5-6.) Because this
3 caused delays, Armstrong typically scheduled yard groups for law
4 library time when those groups were scheduled for yard time. (Id.
5 at 6.)

6 Under the allegations in his Second Amended Complaint and in
7 light of the evidence submitted, Bryant cannot succeed on a class-
8 of-one equal protection claim. First, he maintains that African-
9 American inmates in yard two are being discriminated against by
10 Armstrong on the basis of race, a class-wide theory. Second, the
11 only animus offered by Plaintiff is that Defendant Armstrong
12 assigned Hispanics and Whites library and yard times that did not
13 conflict.

14 Defendant Armstrong's Motion for Summary Judgment on the
15 class-wide equal protection claim against her in count one should
16 be **DENIED**. But to the extent Plaintiff is pursuing a class-of-one
17 equal protection claim against Armstrong, Defendant's Motion for
18 Summary Judgment should be **GRANTED**. The Plaintiff's Motion for
19 Summary Judgment on count one should also be **DENIED**.

20 **B. Count Two: Retaliation (Armstrong)**

21 Inmates have a First Amendment right to meaningful access to
22 the courts, which includes the right to invoke established prison
23 grievance procedures. Trueman v. State, No. CV 09-2179-PHX-
24 RCB(DKD), 2010 U.S. Dist. LEXIS 67847, at *12 (D. Ariz. June 15,
25 2010) (citing Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995)).
26 Government officials may not retaliate against prisoners who
27 exercise their First Amendment rights. Vignolo v. Miller, 120 F.3d
28 1075, 1077-78 (9th Cir. 1997); see also Soranno's Gasco, Inc. v.

1 Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989) (suspending permits
2 because of Soranno's public criticism of defendants).

3 Because retaliation by prison officials may chill a prisoner's
4 exercise of legitimate First Amendment rights, retaliatory conduct
5 is actionable even if it would not otherwise rise to the level of a
6 constitutional violation. Thomas v. Evans, 880 F.2d 1235, 1242
7 (11th Cir. 1989) (citations omitted). Nonetheless, courts review
8 these claims with particular care because they are prone to abuse
9 by prisoners. Graham v. Henderson, 89 F.3d 75, 79 (2d Cir. 1996).

10 Defendant Armstrong argues that she is entitled to summary
11 judgment on the retaliation claim in count two. (Defs.' Mot. Summ.
12 J. Attach. #1 Mem. P. & A. 22, ECF No. 91.) She states that she
13 did not issue the allegedly retaliatory informational chrono
14 against Bryant on January 28, 2008, because of his advice to
15 another inmate about filing grievances; rather, she issued it
16 because of multiple instances of misconduct by Plaintiff between
17 January 8 and 28, 2008. (Id. Attach. #2 Decl. Armstrong, at 7-8.)
18 The Defendant warned Plaintiff about several inappropriate comments
19 he made to her before she ultimately issued the chrono on January
20 28th. (Id. at 7.)

21 Bryant contends that Armstrong "knew of the protected speech."
22 (Pl.'s Mot. Summ. J. 15, ECF No. 92.) In the chrono she wrote on
23 Bryant, Armstrong refers to statements he made about a grievance
24 that was submitted by another inmate, Teklezgi Gebrezgiabher, on
25 January 28, 2008. (Id.) Plaintiff believes the timing is suspect,
26 as Defendant later conceded in an interrogatory response that the
27 chrono was actually submitted on January 28, instead of January 8,
28 2008. (Id.) Armstrong also accused Plaintiff of "dropp[ing] a

1 kite," or snitching, and then taped the written complaint to her
2 desk and displayed it for other prisoners to see. (Id.; see id.
3 Decl. Gebrezgiabher 24-25.)

4 A plaintiff suing prison officials under § 1983 for
5 retaliation must establish (1) that "the retaliated-against conduct
6 is protected," (2) the "defendant took adverse action against
7 plaintiff," (3) the existence of a "causal connection between the
8 adverse action and the protected conduct," (4) the act "would chill
9 or silence a person of ordinary firmness," and (5) that the conduct
10 does not further a legitimate penological interest. Watison v.
11 Carter, 668 F.3d 1108, 1114 (9th Cir. 2012). A plaintiff can
12 allege retaliatory intent by showing a time line of events from
13 which retaliation can be inferred. See id. (citations omitted).

14 The informational chrono issued by Armstrong is dated
15 "Tuesday, January 8, 2008," but references events that occurred on
16 January 8, 22, 25, and 28, 2008. (Pl.'s Mot. Summ. J. Attach. #1
17 Ex. 8, at 38, ECF No. 92 (emphasis added).) Armstrong states in
18 her declaration and response to an interrogatory that the January
19 8, 2008 date on the chrono is a typographical error. (Defs.' Mot.
20 Summ. J. Attach. #2 Decl. Armstrong 7, ECF No. 91; Pl.'s Mot. Summ.
21 J. Ex. 9, at 42, ECF No. 92 ("To the best of my recollection, the
22 date of the chrono should be January 28, 2008, which is the date of
23 the last incident mentioned in the chrono.")) This, however, was
24 not a Tuesday.

25 Bryant submitted a grievance against Armstrong on January 29,
26 2008, alleging discriminatory law library scheduling. (Defs.' Mot.
27 Summ. J. Attach. #3 Decl. Janda Ex. C, at 6, ECF No. 91.)
28 According to Plaintiff, he did not receive the informational chrono

1 until February 7, 2008, which was after his grievance against
 2 Armstrong. (Pl.'s Mot. Summ. J. Decl. Bryant 25, ECF No. 92.)
 3 Plaintiff submitted another grievance against Armstrong on February
 4 19, 2008, for the false informational chrono she previously
 5 submitted against Bryant. (Defs.' Mot. Summ. J. Attach. #3 Decl.
 6 Janda Ex. D, at 17, ECF No. 91.)

7 There is a genuine issue of fact as to the nature of the
 8 retaliated-against conduct and whether it was protected. Bryant
 9 maintains that he was "advising Gebrezgiabher on how to secure his
 10 CDC 602 grievance, [and] Defendant Armstrong became irate"
 11 (Pl.'s Mot. Summ. J. Decl. Bryant 25, ECF No. 92.) Armstrong
 12 counters that "Bryant insinuated to another inmate that I would
 13 commit misconduct by misplacing an inmate appeal that was handed to
 14 me." (Defs.' Mot. Summ J. Attach. #2 Decl. Armstrong 7, ECF No.
 15 91.) Assisting another inmate with the prison grievance procedure
 16 is protected by the First Amendment. Rizzo v. Dawson, 778 F.2d
 17 527, 531-32 (9th Cir. 1985); accord Wiideman v. Smith, No. 3:10-cv-
 18 0329-LRH-RAM, 2010 U.S. Dist. LEXIS 96712, at *5 (D. Nev. Aug. 26,
 19 2010); Lewis v. Tilton, No. 1:07-cv-519-OWW-DLB (PC), 2008 U.S.
 20 Dist. LEXIS 11325, at *24 (E.D. Cal. Jan. 30, 2008). But see Adams
 21 v. James, 784 F.2d 1077, 1082 (11th Cir. 1987); McCalvin v.
 22 Fairman, 603 F. Supp. 342, 347 (C.D. Ill. 1985).

23 If Armstrong submitted the chrono on January 28, 2008, as she
 24 believes, the purportedly retaliatory chrono was written after
 25 Bryant advised inmate Gebrezgiabher but before Bryant filed the
 26 grievance against Armstrong on January 29, 2008. Yet, if the
 27 chrono was actually submitted after January 28, 2008, it could have
 28 been issued in retaliation for giving legal advice to another

1 inmate or for the grievance Bryant submitted against Armstrong on
2 January 29, 2008. See id. Under either scenario, Bryant would
3 have been exercising his First Amendment rights.

4 Plaintiff must demonstrate that Armstrong took "adverse
5 action" against him. Watison, 668 F.3d at 1114. But the adverse
6 action need not rise to the level of a separate constitutional
7 violation. See Pratt v. Rowland, 65 F.3d 802, 804, 806 (9th Cir.
8 1995) (claiming "transfer and subsequent double-celling were done
9 in retaliation for [plaintiff's] exercise of First Amendment
10 rights[]"). More recently, the Ninth Circuit has stated that "the
11 mere threat of harm can be an adverse action" Brodheim v.
12 Cry, 584 F.3d 1262, 1270 (9th Cir. 2009). "[T]he record before the
13 district court was sufficient to establish a genuine issue of
14 material fact as to whether [the corrections officer's] warning
15 constituted an adverse action." Id.

16 Here, Bryant asserts that Armstrong wrote a "false and
17 retaliatory '128-B Information Chrono'" accusing him of making
18 inappropriate comments to her. (Pl.'s Mot. Summ. J. Decl. Bryant
19 25-26, ECF No. 92.) The chrono was written after Bryant assisted
20 inmate Gebrezgiabher with his grievance against Armstrong and after
21 Bryant complained to Sergeant Ellis that Armstrong had accused
22 Plaintiff of "'dropping a kite' (Snitching)" on her. (Id. at 25.)
23 The evidence is sufficient to establish the second element of a
24 retaliation claim, taking adverse action against the Plaintiff.
25 See Watison, 668 F.3d at 1114.

26 The remaining elements of Bryant's claim against Armstrong
27 cannot be resolved on these cross motions. For example, according
28 to Defendant Armstrong, on January 28, 2008, "Bryant insinuated to

1 another inmate that I would commit misconduct by misplacing an
2 inmate appeal that was handed to me. It was obvious that my verbal
3 warnings did not work, so I wrote an Information Chrono"
4 (Defs.' Mot. Summ. J. Attach. #2 Decl. Armstrong 7, ECF No. 91.)
5 She wrote the chrono "based on the accumulation of events and
6 totality of the circumstances." (Id.) There are genuine issues of
7 fact as to whether (a) Bryant's protected conduct was the basis for
8 Armstrong's adverse action; (b) the Defendant's acts would chill a
9 person of ordinary firmness from future First Amendment activity;
10 and (c) Armstrong's action advanced legitimate goals of the prison
11 system. See id.

12 The jury is in the best position to weigh the credibility of
13 Plaintiff and Defendant, identify the constitutionally protected
14 conduct Bryant engaged in, and determine whether Armstrong filed
15 the chrono in retaliation for Plaintiff's protected conduct. See
16 Nelson, 571 F.3d at 929. The remaining factors required for a
17 retaliation claim depend on a determination of the facts.
18 Accordingly, Armstrong's Motion for Summary Judgment on the
19 retaliation claim against her in count two should be **DENIED**.
20 Plaintiff's Motion for Summary Judgment on this claim should also
21 be **DENIED**.

22 **C. Count Three: Equal Protection and Retaliation (Lizarraga,**
23 **Trujillo, Catlett, Janda, and Ochoa)**

24 **1. Equal protection**

25 As discussed previously, a plaintiff can establish an equal
26 protection cause of action by showing that the defendant
27 intentionally discriminated on the basis of plaintiff's membership
28 in a protected class, such as race. Barren, 152 F.3d at 1194-95;

1 Damiano, 785 F.2d at 932-33. Or, if the state action does not
2 implicate a fundamental right or a suspect classification, a
3 plaintiff can establish an equal protection claim by demonstrating
4 that the defendant intentionally treated plaintiff differently from
5 other similarly situated individuals without a rational basis.
6 Engquist, 553 U.S. at 601; Olech, 528 U.S. at 564.

7 **a. Lizarraga**

8 Defendant Lizarraga moves for summary judgment on the equal
9 protection claim in count three that he discriminated against
10 African-American inmates by moving them from ASU #2 to ASU #1,
11 which was a more restrictive placement. (Defs.' Mot. Summ. J.
12 Attach. #1 Mem. P. & A. 24, ECF No. 91.) The Defendant served as a
13 "Floor Officer" in ASU #2 during the time in question. (Id.
14 Attach. #7 Decl. Lizarraga 1.) He sometimes "physically escorted"
15 inmates that were being transferred from one unit to another. (Id.
16 at 4.)

17 First, Lizarraga submits that there is no evidence that
18 African-American inmates were treated differently from other
19 inmates being transferred from ASU #2 to ASU #1. (Id. Attach. #1
20 Mem. P. & A. 24.) Second, prisoners were not transferred for
21 punishment or retaliation; rather, when a cell became available in
22 ASU #1, an inmate from ASU #2, who was compatible with the inmate
23 in an available cell, was moved. (Id.) Third, staff in ASU #1
24 contacted staff in ASU #2 to request an inmate transfer. (Id. at
25 24-25.) Fourth, Lizarraga asserts that as a floor officer, he did
26 not order or approve Bryant's transfer and lacked the authority to
27 do so. (Id. at 25.)
28

1 Bryant argues that after he and inmate Gebrezgiabher filed
2 grievances against Armstrong for racial discrimination, Lizarraga
3 retaliated by targeting African-American inmates assigned to ASU
4 #2, yard group two, and transferring them to ASU #1 until only
5 three yard group two inmates remained in ASU #2. (Pl.'s Mot. Summ.
6 J. 13, ECF No. 92.) "Defendants cannot dispute that there was
7 never another race of inmates assigned to Group yard No. 2 other
8 than African-Americans." (Id. at 14.) Also, Lizarraga knew that
9 yard two was comprised solely of African-American inmates when he
10 initiated his racially-motivated cell moves. (Pl.'s Opp'n Defs.'
11 Mot. Summ. J. 18, ECF No. 101.)

12 In his Declaration, the Defendant explains that the primary
13 administrative segregation unit at Calipatria is ASU #1, but in
14 2007-2008, officials used ASU #2 as an overflow segregation unit.
15 (Def.'s Mot. Summ. J. Attach. #7 Decl. Lizarraga 2, ECF No. 91.)
16 ASU #1 was kept at full capacity, and as space became available,
17 prisoners were transferred from ASU #2 to ASU #1. (Id.) Inmates
18 preferred to be housed in ASU #2. (Id.) Lizarraga represents that
19 he did not have authority to transfer inmates from ASU #2 to ASU
20 #1, or determine which inmates would be transferred, though he
21 often escorted inmates during a transfer. (Id. at 4.) The request
22 by staff in ASU #1 for a transfer had to be approved by a
23 correctional sergeant or a higher-ranking official, because the
24 transferring inmate had to be compatible with the inmate in the
25 available cell. (Id.) Defendant states that on July 7, 2008, he
26 was informed that Bryant was being transferred from ASU #2 to ASU
27 #1; Lizarraga did not order or approve the transfer and did not
28 choose Bryant for the move. (Id.)

1 Transportation Sergeant Catlett, Lizarraga's direct
2 supervisor, acknowledges that he recommended that Bryant be
3 considered for transfer and that Lizarraga lacked the authority to
4 order that inmates be transferred. (Id. Attach. #5 Decl. Catlett
5 1, 3-5; id. Ex. H, at 9.) Bryant's inmate transfer form was
6 completed by Sergeant Catlett and approved by Watch Commander J.L.
7 Prado; the form indicates that only a "Correctional Lieutenant or
8 above" could approve the transfer. (Id. Ex. H, at 9.)

9 Plaintiff points to some evidence contradicting Lizarraga's
10 statements that, as a floor officer, he lacked authority to
11 transfer inmates or select which inmates would be transferred to
12 ASU #1 when space was available. Celotex, 477 U.S. at 324 (noting
13 that to withstand a motion for summary judgment, an opposition must
14 set forth specific facts by producing competent evidence that shows
15 a genuine issue for trial); Taylor, 880 F.2d at 1045 (opposing
16 party cannot rely on allegations that are not supported by factual
17 data).

18 Bryant submits that in a conversation between inmate Tyun
19 Dodson and Lizarraga, the Defendant stated, "'I'm gonna send Bryant
20 to ASU.'" (Pl.'s Mot. Summ. J. Attach. #2 Ex. 20, at 47, 49, ECF
21 No. 92 (Dodson Declaration).) Similarly, Lizarraga told inmate
22 Stevenson, "'Bryant wrote me a 602 (grievance) against me
23 [Lizarraga], so I moved his ass back to ASU, and you're next . . .
24 .'" (Id. Ex. 21, at 52 (Stevenson Declaration).) The two third-
25 party declarations raise a genuine dispute concerning Lizarraga's
26 authority to transfer inmates.

27 "Liability under section 1983 arises only upon a showing of
28 personal participation by the defendant." Taylor, 880 F.2d at

1 1045. State officials are subject to suit in their personal
2 capacity if "they play an affirmative part in the alleged
3 deprivation of constitutional rights." King v. Atiyeh, 814 F.2d
4 565, 568 (9th Cir. 1987). "The inquiry into causation must be
5 individualized and focus on the duties and responsibilities of each
6 individual defendant whose acts or omissions are alleged to have
7 caused a constitutional deprivation." Leer v. Murphy, 844 F.2d
8 628, 633 (9th Cir. 1988).

9 Bryant has produced evidence sufficient to rebut Lizarraga's
10 assertion that he had no authority to transfer Bryant to ASU #2.
11 There is a genuine issue of fact. For these reasons, Lizarraga's
12 Motion for Summary Judgment on the equal protection claim in count
13 three should be **DENIED**, and the Plaintiff's Motion for Summary
14 Judgment should **DENIED**.

15 **b. Trujillo**

16 Bryant argues that on August 15, 2008, Trujillo, the senior
17 hearing officer, conducted Bryant's disciplinary hearing for the
18 rules violation reported by Lizarraga, Plaintiff's refusal to
19 double cell. (Pl.'s Mot. Summ. J. Decl. Bryant 40, ECF No. 92.)
20 Trujillo racially discriminated against Plaintiff by denying his
21 requests to present defense witnesses to testify during the
22 hearing. (Id. at 40-41.) The Defendant also wrote a false report
23 and misrepresented that Plaintiff had chosen not to call any
24 witnesses at the hearing. (Id.) At the conclusion of the hearing,
25 Trujillo "displayed racial discriminatory animus" toward Bryant by
26 calling three Hispanic officers into the office, who surrounded
27 Bryant in a "menacing manner." (Id. at 42.) Plaintiff contends
28 that Trujillo then said to him, "We [the Hispanic staff] are gonna

1 continue to write you up. You are going to obey us whether you
2 like our race or not, or we are gonna make sure you don't ever get
3 out of the hole!" (Id.)

4 Defendant Trujillo does not address the equal protection claim
5 against him in count three. (See generally Defs.' Mot. Summ. J.
6 Attach. #1 Mem. P. & A. 26, ECF No. 91 (arguing for summary
7 judgment only on the retaliation allegation against him in count
8 three).)

9 Plaintiff claims that Trujillo's misrepresentation of the
10 record and his threatening statements are evidence that his
11 decision to deny Plaintiff's request to call witnesses at the
12 disciplinary hearing was racially motivated. (Pl.'s Mot. Summ. J.
13 14, ECF No. 92.) To establish an equal protection violation based
14 on a protected class, Plaintiff must introduce evidence that
15 Trujillo acted with discriminatory intent. See City of Cuyahoga
16 Falls, 538 U.S. at 194.

17 Bryant relies on Trujillo's response to interrogatory number
18 four asking him to state all reasons why, on August 15, 2008, he
19 "denied Plaintiff's request to have the inmates listed as
20 Plaintiff's witnesses on the CDC 115-A form" attend the
21 disciplinary hearing. (Pl.'s Mot. Summ. J. Attach. #2 Ex. 29, at
22 108, ECF No. 92.) The form lists inmates Booker and Dodson. (Id.
23 Attach. #2 Ex. 25, at 78.) Trujillo responded to the interrogatory
24 as follows:

25 Because Plaintiff was in the Administrative
26 Segregation Unit, he was assigned an Investigative
27 Employee to assist him in investigating the charges and
28 interviewing witnesses. The Investigative Employee
interviewed both inmate witnesses prior to the
disciplinary hearing, and documented the interviews in
the Investigative Employee Report. Prior to the hearing,
I reviewed the Investigative Employee Report with the

1 witness statements. Therefore, there was no need to
2 bring the inmates to the hearing.

3 (Id. Ex. 29, at 108-09.) In the violation report he signed on
4 September 12, 2008, Lieutenant Trujillo wrote, "Inmate BRYANT chose
5 not to have witnesses at the hearing." (Id. Attach. #2 Ex. 25, at
6 75.)

7 Trujillo's interrogatory response does not dispute that Bryant
8 asked to call inmates Booker and Dodson at the hearing, and that
9 Trujillo ignored this request. Apparently, he no longer maintains
10 that Bryant chose not to have witnesses at the hearing. Instead,
11 Trujillo states that Bryant was not prejudiced because Trujillo
12 reviewed the inmate witness' statements before the hearing. (See
13 id. Ex. 29, at 108-09.) The Defendant also disputes that he
14 threatened Plaintiff, called three Hispanic officers into the rules
15 violation hearing to threaten Bryant, or made any racially-
16 motivated threats. (Defs.' Mot. Summ. J. Attach. #4 Decl. Trujillo
17 3, ECF No. 91.)

18 It is unclear whether Trujillo maintains that Bryant chose not
19 to call witnesses at the disciplinary hearings. The Defendant's
20 equivocal response to Plaintiff's interrogatory is circumstantial
21 evidence of Trujillo's intent to discriminate. Whether Trujillo
22 and other Hispanic officers threatened Plaintiff because of his
23 race is disputed and is for the jury to resolve. Credibility
24 determinations, weighing of the evidence, and drawing of legitimate
25 inferences all preclude summary judgment. Liberty Lobby, Inc., 477
26 U.S. at 255.

27 Plaintiff's Motion for Summary Judgment against Trujillo on
28 the equal protection cause of action in count three should be
DENIED.

1 **2. Retaliation**

2 Bryant moves for summary judgment against Defendants
3 Lizarraga, Trujillo, Catlett, and Janda on the retaliation claim in
4 count three. (Pl.'s Mot. Summ. J. 14-20, ECF No. 92.) All six
5 Defendants move for summary judgment on the same claim. (Defs.'
6 Mot. Summ. J. Attach. #1 Mem. P. & A. 24-28, ECF No. 91.)

7 **a. Armstrong**

8 Defendant Armstrong argues that she is entitled to summary
9 judgment on the claim that she retaliated against Bryant by
10 transferring him to ASU #1. (Defs.' Mot. Summ. J. Attach. #1 Mem.
11 P. & A. 26, ECF No. 91.) Defendant states that she is alleged to
12 have had "private conversations" with Lizarraga, but she lacked the
13 authority to order or approve cell moves. (Id.) Armstrong
14 contends that there is "no evidence" that she was involved in
15 Plaintiff's cell transfer. (Id.) Essentially, Defendant argues
16 that she had no authority to transfer Bryant, the adverse action
17 alleged in count three. The Plaintiff does not address this
18 argument in either his Motion for Summary Judgment or in his
19 Opposition to Defendants' Motion for Summary Judgment.

20 In the Second Amended Complaint, Bryant does not assert that
21 Armstrong retaliated against him by transferring Bryant to ASU #1.
22 If anything, his claim is that after Armstrong's tenure as legal
23 officer ended, she was seen in ASU #2 "having private
24 conversations" with Lizarraga before he initiated his campaign of
25 racially-motivated cell transfers. (Second Am. Compl. 26, ECF No.
26 39). The Plaintiff has not asserted an independent retaliation
27 claim against Defendant Armstrong for transferring him to ASU #1.
28

1 Defendant Armstrong's Motion for Summary Judgment based on a
2 retaliation claim in count three should be **GRANTED**.

3 **b. Lizarraga**

4 Defendant Lizarraga also moves for summary judgment on the
5 claim that he retaliated against Bryant for filing grievances by
6 transferring Plaintiff to ASU #1 and issuing a false rules
7 violation report. (Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A.
8 20, ECF No. 91.) First, Defendant asserts he could not have
9 retaliated by transferring Bryant to ASU #1 because he lacked the
10 authority to do so. (Id. Attach. #7 Decl. Lizarraga 4.) Second,
11 Lizarraga did not retaliate by issuing the rules violation because
12 the violation was for Plaintiff's refusal to follow a direct order
13 to accept a cellmate, which Bryant admits. (Id. Attach. #1 Mem. P.
14 & A. 25; id. Attach. #7 Decl. Lizarraga 3-4.)

15 Bryant argues that on May 28, 2008, he submitted a grievance
16 against Lizarraga for racially motivated and retaliatory cell
17 transfers; after the submission, the Defendant came to Bryant's
18 cell threatening to move him back to ASU #1. (Pl.'s Mot. Summ. J.
19 16, ECF No. 92; see id. Decl. Bryant 31.) Inmates Dodson and
20 Stevenson, in their declarations, state that Lizarraga separately
21 told each that he transferred, or was going to transfer, Bryant to
22 ASU. (Id. Attach. #2 Ex. 20, at 49; id. Ex. 21, at 52.)

23 Bryant asserts that on July 2, 2008, Lizarraga announced,
24 "Yard #2 i[s] on the yard, so I am going to move some of them to
25 ASU." (Id. Decl. Bryant 31.) Defendant also threatened to write
26 up Plaintiff if he refused to live with a cellmate. (Id.) On July
27 7, 2008, while Bryant was at the law library, he was moved to ASU
28 #1; Plaintiff claims that Lizarraga disposed of some of Bryant's

1 legal documents. (Id. at 37; Pl.'s Opp'n Defs.' Mot. Summ. J. 23,
2 ECF No. 101.) Plaintiff disputes that Lizarraga escorted him to a
3 holding cell in ASU #2 before the move. (Pl.'s Opp'n Defs.' Mot.
4 Summ. J. 23, ECF No. 101 (asserting that Lizarraga's statement is
5 contradicted in the declaration of inmate Rodney Jones).) Bryant's
6 claim that Lizarraga retaliated against him by transferring
7 Plaintiff to ASU #1 cannot be decided at this stage because there
8 is a genuine dispute over whether the Defendant transferred the
9 Plaintiff to ASU #1.

10 Bryant argues that on July 17, 2008, he was served with a
11 false and retaliatory disciplinary report written by Lizarraga
12 indicating that Bryant had "refused a direct order to double cell."
13 (Pl.'s Mot. Summ. J. 16, ECF No. 92.) The Defendant did not follow
14 double-celling procedure, which Plaintiff urges is further evidence
15 of retaliation. (Id. at 17; see id. Decl. Bryant 33.) The timing
16 of Lizarraga's disciplinary report suggests a retaliatory motive
17 because it was filed on July 8, 2008, less than thirty days after
18 Plaintiff's resubmitted grievance against Lizarraga was logged.
19 (Id. Decl. Bryant 37.)

20 Bryant submitted his grievance against Lizarraga on May 28,
21 2008. (Id. Attach. #1 Ex. 14, at 72.) Plaintiff resubmitted it on
22 June 5, 2008, and it was ultimately "logged" on June 9, 2008. (Id.
23 Decl. Bryant 37; see also id. Attach. #1 Ex. 14, at 72, 75.) On
24 July 2, 2008, the Defendant notified Bryant that because he had
25 been temporarily single-celled, a compatible cellmate would be
26 assigned to Bryant's cell. (Defs.' Mot. Summ. J. Attach. #7 Decl.
27 Lizarraga 3, ECF No. 91.) Bryant contends that Defendant
28 threatened to write him up unless he agreed to cell with inmate

Booker. (Pl.'s Mot. Summ. J. Decl. Bryant 31, ECF No. 92.) When Plaintiff refused Lizarraga's direct order to accept a cellmate, Defendant issued a rules violation report. (Defs.' Mot. Summ. J. Attach. #7 Decl. Lizarraga 3, ECF No. 91.)

In his July 8, 2008 rules violation report, Lizarraga states the following:

On Wednesday, July 2, 2008, . . . I instructed Inmate BRYANT . . . to prepare to receive a cell mate to accommodate institutional needs. I informed BRYANT he was double cell cleared and needed to [] a cell mate, and a refusal too [sic] double cell would result in the issuance of a CDCR 115 rules violation report. Inmate BRYANT stated 'well then, you have your answer[.]' I ask[ed] BRYANT if that meant he was refusing to double cell. Inmate BRYANT stated 'do what you gotta do[] I ain't doubling up'. I informed BRYANT that I intended on housing Inmate BOOKER . . . who is assigned to the same yard group as himself an[d] who is currently housed singly with him. BRYANT stated 'you got my answer, and when you write me up just don't lie I hate Liars.'

(Id. Attach. #4 Decl. Trujillo Ex. F, at 5.) The Plaintiff was ultimately found guilty of refusing a direct order to double cell. (Id. at 8.)

There is no issue of fact as to whether Bryant's conduct was protected. He was exercising his First Amendment right to file inmate grievances and discuss the grievance procedure with other inmates. See Watison, 668 F.3d at 1114. Similarly, Lizarraga took adverse action by issuing a rules violation against Bryant on July 8, 2008. (Defs.' Mot. Summ. J. Attach. #7 Decl. Lizarraga 3, ECF No. 91; see id. Attach. #4 Decl. Trujillo Ex. F, at 5.) Because whether the Defendant transferred Bryant is disputed, neither party is entitled to summary judgment on this aspect of Plaintiff's retaliation claim.

There is a material issue of fact as to whether the Defendant transferred Bryant and, if so, whether he transferred Plaintiff and

1 issued the rules violation to retaliate for protected First
2 Amendment activity. There is insufficient evidence to warrant
3 summary judgment for either party because the responsibility for
4 the transfer to ASU #1 and the causal connection are disputed.
5 Defendant Lizarraga's Motion for Summary Judgment should be **DENIED**.
6 The Plaintiff's Motion for Summary Judgment should also be **DENIED**.

7 **c. Trujillo**

8 Defendant Trujillo argues that there is no evidence that he
9 retaliated by conducting Bryant's disciplinary hearing unfairly.
10 (Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 26, ECF No. 91.)
11 Defendant maintains that he was impartial during the hearing and
12 assigned an investigative employee to assist Bryant in interviewing
13 witnesses. (Id. Attach. #4 Decl. Trujillo, at 2.) Trujillo states
14 that he read the witness interviews and Bryant's written statement,
15 and Trujillo permitted Plaintiff to question the reporting officer,
16 Lizarraga, during the hearing. (Id.)

17 Bryant argues that Trujillo retaliated by refusing Plaintiff's
18 requests to call defense witnesses and then misrepresenting that
19 Bryant merely chose not to call any witnesses. (Pl.'s Mot. Summ.
20 J. Decl. Bryant 40-41, ECF No. 92.) When Plaintiff appealed
21 Trujillo's finding on October 8, 2008, Defendant misrepresented the
22 facts again by stating that he allowed Bryant to call witnesses.
23 (Id. at 42.) Yet, in his subsequent discovery responses, Trujillo
24 stated that "'there was no need to bring witnesses to the
25 hearing.'" (Id. at 43.)

26 As an initial matter, it does not appear that Trujillo
27 disputes that Bryant engaged in conduct that was constitutionally
28 protected or that Trujillo's conduct can constitute an adverse

1 action, which would satisfy two elements of a retaliation claim.
2 See Watison, 668 F.3d at 1114. Trujillo does, however, dispute
3 that the disciplinary hearing was conducted to retaliate against
4 Plaintiff for constitutionally protected activity. He also
5 disputes that threatening conduct occurred. A genuine issue of
6 fact exists as to causation, whether the Defendant's conduct would
7 chill protected activity, and whether Trujillo's actions furthered
8 a legitimate penological interest. These elements of Bryant's
9 retaliation claim cannot be resolved on the evidence before the
10 Court. Consequently, neither Bryant nor Trujillo is entitled to
11 summary judgment. The Defendant's Motion for Summary Judgment on
12 the retaliation claim against him in count three should be **DENIED**.
13 Likewise, Bryant's Motion for Summary Judgment should be **DENIED**.

14 **d. Catlett**

15 Defendant Catlett seeks summary judgment on Bryant's claim
16 that by denying his inmate appeals regarding Lizarraga's
17 retaliatory cell moves, Catlett sanctioned Lizarraga's retaliatory
18 conduct. (Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 27, ECF No.
19 91.) Catlett argues that his only involvement was interviewing
20 Plaintiff in response to his inmate appeals, and therefore there is
21 no evidence that he sanctioned Lizarraga's purportedly retaliatory
22 conduct. (Id.)

23 Bryant states that Catlett knew Plaintiff had filed a
24 grievance against Lizarraga for discriminating and retaliating
25 through cell transfers. (Pl.'s Mot. Summ. J. 17-18, ECF No. 92
26 (referencing grievance log Cal-A-08-01027); see id. Attach. #1 Ex.
27 14, at 70-72 (indicating that this grievance was filed against
28 Lizarraga only).) Correctional Sergeant Catlett "endorsed"

1 Lizarraga's false disciplinary report by signing it as the
2 reviewing officer, and he was with Lizarraga on July 7, 2008, when
3 they discussed double celling, and Catlett "authorized the racially
4 motivated retaliatory cell move" to ASU #1. (Pl.'s Mot. Summ. J.
5 18, ECF No. 92; id. Attach. #2 Ex. 23, at 59.) Catlett also
6 falsified information at his first level of review of Bryant's
7 grievance against Lizarraga when Catlett stated that he interviewed
8 Bryant on July 27, 2008, but in his discovery responses, Catlett
9 stated that he could not recall whether he interviewed Plaintiff.
10 (Id. Decl. Bryant 39.)

11 In his Opposition to Catlett's Motion for Summary Judgment,
12 Bryant also states that Catlett falsified a chrono indicating that
13 on July 2, 2008, Plaintiff told other inmates that they would be
14 moved to ASU #1 if they accepted a cellmate, but they could stay in
15 ASU #2 if they refused. (Pl.'s Opp'n Defs.' Mot. Summ. J. 24, ECF
16 No. 101.) According to Plaintiff, Catlett's reason for issuing the
17 chrono and recommending that Bryant be transferred to ASU #1 was
18 pretextual because Plaintiff's statements to other inmates did not
19 violate any institutional rule and were protected by the First
20 Amendment. (Id. at 25.)

21 Some of the elements of Bryant's retaliation claim are not
22 disputed. First, Bryant exercised his First Amendment right to
23 file grievances, which is a protected activity. Watison, 668 F.3d
24 at 1114. Second, Catlett took adverse action against Plaintiff.
25 Id. This Defendant issued an informational chrono that detailed
26 his request that Bryant be transferred to ASU #1. (Defs.' Mot.
27 Summ. J. Attach. #5 Decl. Catlett 3, ECF No. 91; see id. Ex. G, at
28 7.) He signed the rules violation report that was issued by his

1 subordinate, Officer Lizarraga. (Id. Attach. #5 Decl. Catlett 4.)
2 But signing the report is not an adverse action that would support
3 a retaliation claim. The Defendant contests to some degree that he
4 misrepresented that he had interviewed Bryant; Catlett states in an
5 interrogatory responses that he does not recall whether he or
6 someone else personally interviewed Plaintiff. Nonetheless, this
7 is not a material issue of fact sufficient to preclude summary
8 judgment for Defendant Catlett. See Liberty Lobby, Inc., 477 U.S.
9 at 248 (stating that material issues are those that might influence
10 the outcome of the lawsuit under governing law).

11 But the evidence does conflict as to whether there is a causal
12 connection between the protected conduct - filing a grievance
13 against Lizarraga on May 28, 2008 - and Catlett's July 2, 2008
14 chrono. See Watison, 668 F.3d at 1114. It is unclear whether
15 Catlett knew that Bryant had submitted a grievance against
16 Lizarraga on May 28, 2008, before Plaintiff was transferred to ASU
17 #1 on July 7, 2008. Nonetheless, the parties do not dispute that
18 Catlett was with Lizarraga on July 2, 2008, when Lizarraga informed
19 Bryant that he needed to accept a cellmate. (Defs.' Mot. Summ. J.
20 Attach. #5 Decl. Catlett 3, ECF No. 91; see id. Ex. G, at 7.) It
21 is also undisputed that on July 7, 2008, Catlett issued an
22 informational chrono referring to the cellmate incident and
23 requesting that Bryant be transferred to ASU #1. (Id. Attach. #5
24 Decl. Catlett 3-4; see id. Ex. G, at 7.)

25 On July 2, 2008, Catlett heard Lizarraga inform Plaintiff that
26 he needed to accept a cellmate and that if he refused, Lizarraga
27 would have to issue a rules violation. (Id. at 3; id. Ex. G, at
28 7.) Plaintiff refused and began encouraging other inmates to do

1 the same. (Id. at G, at 7.) Catlett states, "Plaintiff refused an
2 order, and I knew that Lizarraga would follow policy and issue
3 Plaintiff a Rules Violation Report (RVR) for the violation. On
4 July 7, 2008, I wrote a CDC 128 Informational Chrono to document
5 what I witnessed in support of the forthcoming RVR." (Id. Attach.
6 #5 Decl. Catlett 3; see id. Ex. G, at 7.) That same day, Catlett
7 completed a form approving Bryant for transfer to ASU #1. (Id. at
8 5.) Catlett represents that he was responding to a request from
9 ASU #1 staff for an inmate transfer. (Id. at 4.)

10 Sergeant Catlett's authority to transfer inmates is unclear.
11 In his Declaration, Catlett states, "I thought it was appropriate
12 to transfer Plaintiff to ASU 1. Therefore, I approved Plaintiff
13 for transfer to ASU 1 that day." (Defs.' Mot. Summ. J. Attach. #5
14 Decl. Catlett 4-5, ECF No. 91 (emphasis added).) Yet, in the
15 informational chrono dated July 7, 2008, Catlett wrote, "I am
16 requesting that Inmate Bryant be rehoused in ASU#1 as his continued
17 presence in ASU #2 is a disruptive force as he encourages other
18 Inmates to resist double celling within ASU#2." (Id. Ex. G, at 7
19 (emphasis added); see also id. Ex. H, at 9.)

20 There is a genuine issue of material fact as to whether a
21 sufficient causal connection exists between Plaintiff's grievance
22 against Lizarraga and Catlett's informational chrono and cell
23 transfer order. The jury should also decide whether Catlett's
24 actions would chill a person of ordinary firmness and whether they
25 furthered a legitimate penological interest. See Watison, 668 F.3d
26 at 1114. Catlett's Motion for Summary Judgment and Plaintiff's
27 Motion for Summary Judgment on the retaliation claim against
28 Catlett in ground three should both be **DENIED**.

1 **e. Ochoa and Janda**

2 Then-Chief Deputy Warden Ochoa and former Associate Warden
3 Janda argue that the retaliation claims against them in count three
4 fail as a matter of law. (Defs.' Mot. Summ. J. Attach. #1 Mem. P.
5 & A. 27, ECF No. 91; see id. Attach. #3 Decl. Janda 2; id. Attach.
6 #6 Decl. Ochoa 1.) Ochoa is alleged to have sanctioned the other
7 Defendants' misconduct by instructing the appeals coordinator to
8 screen out Bryant's grievance regarding Lizarraga's cell transfers.
9 (Id. Attach. #1 Mem. P. & A. 27.) Defendants Ochoa and Janda
10 purportedly ratified the racial discrimination of Defendants
11 Armstrong, Lizarraga, and Trujillo through Ochoa's denials of
12 Plaintiff's grievances. (Id.) Ochoa and Janda argue that these
13 claims are merely based on the fact that, as supervisors, they
14 reviewed and responded to Bryant's inmate appeals. (Id. at 27-28.)

15 In their declarations, both Defendants assert that they did
16 not screen out or refuse to process any of Bryant's appeals. (Id.
17 Attach. #3 Decl. Janda 2 (affirmatively stating so); id. Attach. #6
18 Decl. Ochoa 2 (indicating that he has no recollection of screening
19 out any grievance).) Ochoa and Janda state that they reviewed the
20 appeals based on the information provided to them, and Janda
21 submits that there is no evidence that he denied the appeals in
22 retaliation. (Id. Attach. #3 Decl. Janda 2; id. Attach. #6 Decl.
23 Ochoa 3.)

24 The Plaintiff does not oppose Defendant Ochoa's Motion for
25 Summary Judgment, but he seeks summary judgment on his retaliation
26 claim against Defendant Janda. (See generally Pl.'s Mot. Summ. J.
27 15-20, ECF No. 92; see id. at 19-20.) According to Bryant, by
28 signing Lizarraga's false disciplinary report, which was unfairly

1 adjudicated by Trujillo, Janda ratified Lizarraga's and Trujillo's
2 misconduct. (Id. Decl. Bryant 44; see Defs. Mot. Summ. J Attach.
3 #4 Decl. Trujillo Ex. F, at 5, ECF No. 91.) Bryant states that
4 Defendant Janda was aware of two retaliatory cell moves (June 7,
5 2007, and July 7, 2008) and that he conducted the Institutional
6 Classification Committee review that resulted in the June 2007
7 transfer of Plaintiff to ASU #2, yard group two. (Pl.'s Mot. Summ.
8 J. Decl. Bryant 44-45, ECF No. 92.)

9 "A defendant may be held liable as a supervisor under § 1983
10 'if there exists either (1) his or her personal involvement in the
11 constitutional deprivation, or (2) a sufficient causal connection
12 between the supervisor's wrongful conduct and the constitutional
13 violation.'" Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011),
14 cert. denied, __ U.S. __, 132 S. Ct. 2101 (2012) (quoting Hansen v.
15 Black, 885 F.2d 642, 646 (9th Cir. 1989)). A causal connection is
16 established if a defendant sets in motion a series of acts by
17 others or knowingly refuses to terminate a series of acts by others
18 that the supervisor reasonably should have known would lead to a
19 constitutional violation. Starr, 652 F.3d at 1207-08 (citing
20 Dubner v. City & County of San Francisco, 266 F.3d 959, 968 (9th
21 Cir. 2001)). "'A supervisor can be liable in his individual
22 capacity for his own culpable action or inaction in the training,
23 supervision, or control of his subordinates; for his acquiescence
24 in the constitutional deprivation; or for conduct that showed a
25 reckless or callous indifference to the rights of others.'" Id. at
26 1208 (quoting Watkins v. City of Oakland, 145 F.3d 1087, 1093 (9th
27 Cir. 1998)).
28

1 The claim against Ochoa is that he sanctioned the Defendants'
2 misconduct by causing Bryant's grievance to be screened out. The
3 Defendant completed the second level review for four different
4 grievances submitted by Plaintiff. (Defs.' Mot. Summ. J. Attach.
5 #6 Decl. Ochoa 2-3, ECF No. 91.) "I don't recall screening-out any
6 inmate appeals filed by Plaintiff that are mentioned in the Second
7 Amended Complaint." (Id. at 2.) In opposing Ochoa's Motion for
8 Summary Judgment, Bryant does not present any arguments or evidence
9 showing that Ochoa retaliated against him. See Celotex, 477 U.S.
10 at 324 (requiring that to withstand summary judgment, the opposing
11 party must produce competent evidence that establishes genuine
12 issues for trial).

13 Bryant belatedly attempts to oppose Ochoa's Motion in his
14 supplemental memorandum and declaration. (Pl.'s Suppl. Mem. P. &
15 A. Opp'n Defs.' Mot. Summ. J. 5, ECF No. 113.) He argues that
16 although Ochoa indicated that he did not review any specific policy
17 when denying Bryant's appeals, Defendant later identifies a prison
18 policy "that would support" Ochoa's denial. (Id.; Pl.'s Suppl.
19 Decl. Opp'n Defs.' Mot. Summ. J. Ex. 40, at 33-49, ECF No. 115.)
20 Bryant's assertion that Ochoa reviewed the antidiscrimination
21 policies identified in discovery responses adds little to the claim
22 against Defendant Ochoa. (See Pl.'s Suppl. Mem. P. & A. Opp'n
23 Defs.' Mot. Summ. J. 5, ECF No. 113.) Plaintiff has not provided
24 the type of evidence sufficient to preclude summary judgment.
25 There is no material triable issue, and Ochoa's Motion should be
26 **GRANTED.**

27 As to Defendant Janda, on October 7, 2008, he signed the rules
28 violation report that was written by Lizarraga three months

1 earlier; Janda signed in place of Associate Warden S. Anderson, who
2 was not available to sign the report. (Defs.' Mot. Summ. J.
3 Attach. #3 Decl. Janda 3, ECF No. 91; see id. Attach. #4 Decl.
4 Trujillo Ex. F, at 5.) Janda states, "I signed the RVR as a
5 reviewer. My task was to review the written report for specificity
6 and completeness and to spot other issues such as timeliness and
7 due process issues." (Id. Attach. #3 Decl. Janda 3.) Unlike the
8 circumstantial evidence that Defendant Catlett knew of Lizarraga's
9 misconduct because he directly supervised Lizarraga, issued a
10 chrono against Bryant, and transferred Plaintiff to yard one, there
11 is no evidence that Janda knew Lizarraga may have had a retaliatory
12 motive. (See id. Attach. #3 Decl. Ochoa 3 (submitting that the
13 correctional sergeants directly supervised Defendants Armstrong or
14 Lizarraga).)

15 As chairperson of the Institution Classification Committee,
16 Janda participated in the decision to transfer Plaintiff from ASU
17 #1 to ASU #2 on June 7, 2007, which was seven days after Bryant
18 served Janda with a summons and complaint in different civil action
19 pending before the court. (Id. at 4; Pl.'s Mot. Summ. J. Decl.
20 Bryant 44-45, ECF No. 92.) Also, Bryant submits that Janda knew
21 that Lizarraga transferred Plaintiff in retaliation a second time
22 from ASU #2 to ASU #1 on July 7, 2008. (Id. at 45.)

23 Bryant points to no evidence indicating how Janda knew about,
24 or was involved with, a racially motivated and retaliatory cell
25 transfer on June 7, 2007. The events giving rise to this action
26 occurred after June 7, 2007. Consequently, they cannot be the
27 basis for a retaliatory transfer before that date. Furthermore,
28 there is nothing in the record showing how Janda's position as

1 chairperson affected any subsequent cell moves or how Janda was
 2 involved with Lizarraga's July 2008 allegedly retaliatory transfer.
 3 Bryant attempts to establish Janda's liability because, as a
 4 supervisor, he signed off on a report that Janda reviewed for
 5 completeness and timeliness. (Defs.' Mot. Summ. J. Attach. #3
 6 Decl. Janda 3, ECF No. 91.)

7 Plaintiff has presented no evidence that reasonably supports a
 8 conclusion that former-Associate Warden Janda retaliated against
 9 him for engaging in constitutionally-protected conduct. The
 10 eleventh-hour assertion that Janda retaliated against Plaintiff
 11 after Janda was served with a summons for a separate lawsuit is
 12 unrelated to the allegations in the Second Amended Complaint.
 13 There is no basis to conclude that Janda harbored a retaliatory
 14 intent or was aware of Defendants Lizarraga and Trujillo's
 15 misconduct. See Starr, 652 F.3d at 1207-08. Janda's Motion for
 16 Summary Judgment on the retaliation claim in count three should be
 17 **GRANTED**. Plaintiff's Motion for Summary Judgment should be **DENIED**.

18 **D. Count Four: California Civil Code Sections 52.1, 51.7, and**
 19 **52(b) (Armstrong, Lizarraga, and Trujillo)**

20 Finally, Defendants Armstrong, Lizarraga, and Trujillo move
 21 for summary judgment on the state law claims against them in count
 22 four. (Defs.' Mot. Summ. J. Attach. #1 Mem. P. & A. 29, ECF No.
 23 91.) California Civil Code section 52.1 provides a cause of action
 24 for any person whose rights were interfered with, or were attempted
 25 to be interfered with, by another. Cal. Civ. Code § 52.1(b) (West
 26 2010); Cabesuela v. Browning-Ferris Indus. of Cal., 68 Cal. App.
 27 4th 101, 110, 80 Cal. Rptr. 2d 60, 64-65 (1998).

28 California Civil Code § 52.1, commonly known as the
 Bane Civil Rights Act, provides that "[a]ny individual

1 whose exercise or enjoyment of rights secured by the
 2 Constitution or laws of the United States, or of rights
 3 secured by the Constitution or laws of this state, has
 4 been interfered with, or attempted to be interfered with
 5 [by threats, intimidation, or coercion], may institute
 6 and prosecute . . . a civil action for damages."

7 Fernandez v. Morris, No. 08-CV-0601 H(PCL), 2008 U.S. Dist. LEXIS
 8 54298, at *23 (S.D. Cal. July 16, 2008) (quoting Cal. Civ. Code §
 9 52.1(b)).

10 To state a claim under section 52.1, "the statutory language
 11 clearly requires only 'threats, intimidation, or coercion.'"
 12 Moreno v. Town of Los Gatos, 267 F. App'x 665, 669 (9th Cir. 2008).
 13 Some courts have suggested that a plaintiff must also establish the
 14 existence of violence or intimidation by threat of violence. See
 15 Fernandez, 2008 U.S. Dist. LEXIS 54298, at *23 (quoting Cabesuela,
 16 68 Cal. App. 4th at 111, 80 Cal. Rptr. 2d at 65); Rabkin v. Dean,
 17 856 F. Supp. 543, 552 (N.D. Cal. 1994) (citing Cal. Civ. Code §
 18 52.1(j)) ("[T]he statute is meant to protect against violence or
 19 the threat of violence.") The Ninth Circuit, however, has
 20 concluded that requiring violence or a threat of violence "is no
 21 longer a correct interpretation of section 52.1's requirements."
 22 Moreno, 267 F. App'x at 666.

23 By way of contrast, California Civil Code section 51.7
 24 provides that persons have the right to be free from violence or
 25 threats of violence resulting from their membership in a protected
 26 class. Cal. Civ. Code § 51.7(a); Cabesuela, 68 Cal. App. 4th at
 27 111, 80 Cal. Rptr. 2d at 65 (citing Boccatto v. City of Hermosa
 28 Beach, 29 Cal. App. 4th 1797, 1809, 35 Cal. Rptr. 2d 282, 290
 (1994)). California Civil Code section 52(b) describes the
 available remedies for a violation of section 51.7, which include
 "actual damages, punitive damages, a civil penalty of \$25,000 per

1 plaintiff, attorney's fees and injunctive relief." Pinzon v.
 2 Jensen, No. 1:08-cv-1543 AWI GSA, 2009 U.S. Dist. LEXIS 11185, at
 3 *17 (E.D. Cal. Jan. 30, 2009); see Cal. Civil Code § 52(b).

4 **1. Armstrong, Lizarraga, and Trujillo**

5 These three Defendants argue that the evidence proves they did
 6 not threaten or intimidate Plaintiff; rather, they were merely
 7 performing their job duties to house and guard Bryant, as well as
 8 adjudicate his rules violation. (Defs.' Mot. Summ. J. Attach. #1
 9 Mem. P. & A. 29, ECF No. 91.) There is no evidence, the Defendants
 10 contend, that they acted or made threats based on Plaintiff's race;
 11 in fact, Bryant's claim is that Armstrong, Lizarraga, and Trujillo
 12 made threats because Plaintiff filed grievances against them.
 13 (Id.) Although the Plaintiff does not move for summary judgment on
 14 these claims, he opposes Defendants' Motion. (See Pl.'s Opp'n
 15 Defs.' Mot. Summ. J. 28-30, ECF No. 101.)

16 The California Supreme Court has explained that to prevail on
 17 a claim under section 52.1, a plaintiff must establish "an
 18 attempted or completed act of interference with a legal right,
 19 accompanied by a form of coercion." Jones v. Kmart Corp., 17 Cal.
 20 4th 329, 334, 949 P.2d 941, 943-44, 70 Cal. Rptr. 2d 844, 847
 21 (1998). Federal courts have held that "[t]he word 'interferes' as
 22 used in 52.1 means 'violates.'" Cameron v. Buether, No.
 23 09-CV-2498-IEG(WMc), 2010 U.S. Dist. LEXIS 27276, at *12 (S.D. Cal.
 24 Mar. 23, 2010) (quoting Austin V. v. Escondido Union Sch. Dist.,
 25 149 Cal. App. 4th 860, 883, 57 Cal. Rptr. 3d 454, 472 (2007)).
 26 "The essence of a Bane Act claim is that the defendant, by
 27 'threats, intimidation or coercion,' tried to or did prevent the
 28 plaintiff from doing something he or she had the right to do under

1 the law, or to force the plaintiff to do something that he or she
2 was not required to do under the law." Shoval v. San Diego County,
3 No. 09-CV-01348-H (JMA), 2009 U.S. Dist. LEXIS 77723, at *10 (S.D.
4 Cal. Aug. 31, 2009) (quoting Kmart Corp., 17 Cal. 4th at 334, 949
5 P.2d at 943-44, 70 Cal. Rptr. 2d at 847).

6 Bryant asserts that Defendant Armstrong interfered with his
7 First and Fourteenth Amendment rights with verbal threats of
8 violence because of his membership in a protected racial class.
9 (Pl.'s Opp'n Pl.' Mot. Summ. J. Decl. Bryant 61, ECF No. 101.)
10 Specifically, Armstrong intimidated Bryant with verbal threats of
11 violence by telling Plaintiff he would get "taken care of and would
12 not safely walk the prison yard" if he continued to pursue
13 grievances against Armstrong for discrimination. (Id.) The
14 Defendant, in contrast, testifies, "I never threatened or
15 intimidated Plaintiff." (Defs. Mot. Summ. J. Attach. #2 Decl.
16 Armstrong 8, ECF No. 91.) The jury must evaluate the parties'
17 credibility to determine whether Armstrong made these threats.

18 In his Declaration, Plaintiff also claims that Defendant
19 Armstrong threatened him when she authored a chrono "suggesting
20 that [Bryant's] safety could be in jeopardy." (Pl.'s Opp'n Defs.'
21 Mot. Summ. J. 61, ECF No. 101.) Yet, in the July 8, 2008 chrono,
22 Armstrong described various comments Bryant had made in front of
23 other inmates regarding her "showing favoritism to other races."
24 (Id. Attach. #1 Ex. 8, at 40.) The Defendant also wrote: "Bryant
25 makes most of these comments in front of other inmates. I feel
26 that this could possibly jeopardize [Bryant's] safety. I also feel
27 that Inmate Bryant's resentment towards me could lead to him
28 becoming assaultive towards me based on his extensive past Staff

1 assaultive history." (Id.) It is for the jury to decide whether
2 the reference to Bryant jeopardizing his safety should be construed
3 as a threat of violence or a form of coercion.

4 As to Lizarraga, the Plaintiff represents that Lizarraga
5 similarly interfered with his First and Fourteenth Amendment rights
6 with verbal threats of violence because of Bryant's membership in a
7 protected racial class. (Id. Decl. Bryant 61.) Defendant told
8 Bryant he would make sure Plaintiff was "taken care of" and would
9 not be able to safely walk the yard if Plaintiff continued to
10 pursue grievances for discrimination. (Id.)

11 Plaintiff speculates that on July 7, 2008, after Bryant
12 tendered his grievance against Lizarraga for discriminatory and
13 retaliatory cell transfers, Lizarraga disposed of some of
14 Plaintiff's legal documents while moving him to ASU #1. (Id. at
15 61-62.) The Defendant testifies, in contrast, that he "never
16 threatened or attempted to intimidate Plaintiff." (Defs.' Mot.
17 Summ. J. Attach. #7 Decl. Lizarraga 5, ECF No. 91.) Lizarraga also
18 submits that on July 7, 2008, he escorted Bryant to a holding cell
19 in ASU #2 for the transfer to ASU #1, but did not escort him to ASU
20 #1 or take his property. (Id.) Bryant's speculation about missing
21 property does not constitute evidence that would defeat Lizarraga's
22 Motion for Summary Judgment. Nevertheless, other evidence
23 conflicts, and Lizarraga is not entitled to summary judgment.

24 Finally, Bryant contends that Defendant Trujillo intimidated
25 Plaintiff with the threat of physical violence when he called
26 Hispanic officers into the office to surround Plaintiff in a
27 "menacing manner." (Pl.'s Opp'n Defs.' Mot. Summ. J. Decl. Bryant

28 //

1 63, ECF No. 101.) Trujillo denies that allegation:

2 I never threatened or attempted to intimidate
 3 Plaintiff. I did not call any officers or staff into the
 4 RVR hearing in order to threaten or intimidate Plaintiff
 5 for any reason. Specificlaly, I did not call three
 6 Hispanic officers into the RV hearing to harass,
 7 intimidate, or threaten Plaintiff. I never witnessed any
 8 officers or staff threaten or attempt to intimidate
 9 Plaintiff. I never engaged in or made any
 10 racially-motivated attacks or threats against Plaintiff.

11 (Defs.' Mot. Summ. J. Attach. #4 Decl. Trujillo 3, ECF No. 91.)

12 This claim cannot be resolved by weighing conflicting declarations.

13 When ruling on a motion for summary judgment, "[t]he evidence of
 14 the nonmovant is to be believed, and all justifiable inferences are
 15 to be drawn in his favor." Liberty Lobby, Inc., 477 U.S. at 255.

16 For these reasons, Defendants Armstrong, Lizarraga, and
 17 Trujillo's Motion for Summary Judgment on the state law claims in
 18 count four should be **DENIED**.

19 IV. CONCLUSION

20 The Defendants' Motion for Summary Judgment [ECF No. 91]
 21 should be **GRANTED in part** and **DENIED in part**. Bryant's Motion for
 22 Summary Judgment should be **DENIED**.

23 As to the equal protection cause of action in count one
 24 against Defendant Armstrong, there is a genuine issue of material
 25 fact, and summary judgment on a class-wide theory for neither party
 26 is appropriate and should be **DENIED**. But Armstrong's Motion for
 27 Summary Judgment for the equal protection cause of action on a
 28 class-of-one theory should be **GRANTED**. Plaintiff's Motion for
 Summary Judgment should also **DENIED**.

With respect to count two, Defendant Armstrong is also not
 entitled to summary judgment on the retaliation claim against her.

1 Armstrong's Motion for Summary Judgment should be **DENIED**, and
2 Bryant's Motion for Summary Judgment should also be **DENIED**.

3 In count three, there is a genuine issue of material fact for
4 the equal protection cause of action against Defendant Lizarraga.
5 His Motion for Summary Judgment should be **DENIED**, and Bryant's
6 Motion should be **DENIED**. Similarly, Bryant is not entitled to
7 summary judgment for the equal protection claim against Trujillo in
8 count three, and Plaintiff's Motion should be **DENIED**. Trujillo did
9 not seek summary judgment on this aspect of count three.

10 Bryant does not attempt to establish a retaliation cause of
11 action in count three against Armstrong, and her Motion for Summary
12 Judgment should therefore be **GRANTED**. There is an issue of fact
13 with respect to whether Defendant Lizarraga retaliated against
14 Bryant; Defendant Lizarraga's Motion for Summary Judgment should be
15 **DENIED**. Plaintiff's Motion on this claim should also be **DENIED**.
16 Defendant Trujillo is not entitled to summary judgment on the
17 retaliation claim in count three. Plaintiff's and Defendant
18 Trujillo's Motions should both be **DENIED**. Defendant Catlett is not
19 entitled to summary judgment on the retaliation claim in count
20 three. Thus, Catlett's Motion for Summary Judgment as well as
21 Bryant's Motion for Summary Judgment should be **DENIED**. Defendants
22 Ochoa and Janda are both entitled to summary judgment on the
23 retaliation claims against them in count three, and their Motion
24 for Summary Judgment should be **GRANTED**. Bryant has not moved for
25 summary judgment against Defendant Ochoa. Plaintiff Bryant's
26 Motion for Summary Judgment concerning Janda's retaliatory conduct
27 alleged in count three should be **DENIED**.

28

1 Finally, with respect to the California Civil Code violations
2 asserted in count four, there are material issues of fact as to
3 whether Defendants Armstrong, Lizarraga, and Trujillo are liable.
4 Their Motion for Summary Judgment should be **DENIED**.

5 This Report and Recommendation will be submitted to the United
6 States District Court judge assigned to this case, pursuant to the
7 provisions of 28 U.S.C. § 636(b)(1). Any party may file written
8 objections with the Court and serve a copy on all parties on or
9 before August 29, 2012. The document should be captioned
10 "Objections to Report and Recommendation." Any reply to the
11 objections shall be served and filed on or before September 12,
12 2012. The parties are advised that failure to file objections
13 within the specified time may waive the right to appeal the
14 district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
15 1991).

16
17 DATE: August 3, 2012



RUBEN B. BROOKS
United States Magistrate Judge

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19 cc: Judge Whelan
20 All Parties of Record
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